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ABSTRACT

The examination of state law and the education of handicapped children is intended as a guide for persons seeking change in direction, a rationale, and a model for statutory provisions for exceptional child education. Issues discussed relate specifically to the special legal provisions needed by handicapped children. Background information is presented, the current status of state law summarized, and recommendations presented on the following aspects of state law and exceptional child education: the right to an education, the handicapped population and definitions of such, identification and placement, administrative responsibility, planning and coordination of resources, finance, administrative structures and organization of school districts, educational services, private schools, teachers and other educational personnel, and facilities. Concluding the book is a comprehensive set of model statutory provisions intended to assist states wishing to revise or create laws relating to the education of the handicapped. The models are designed to be incorporated into the comprehensive school law applying to all children in a state. (KW)

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State Law & Education of Handicapped Children: Issues & Recommendations

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The Council for Exceptional Children
1411 South Jefferson Davis Highway
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Preface

Although this book carries the names of the three authors, there are many others who contributed to its development. Specifically, acknowledgment must be given to Mitchell Wendell, a gifted attorney whose insight into the needs of the handicapped and whose assistance made possible the model statutes which appear as Chapter 12 of the book.

Extensive credit for production of this book must go to the entire staff of The Council for Exceptional Children Governmental Relations Unit and especially to Mrs. Trudy Bryan for her competence, assistance, and patience. No amount of reimbursement could ever be sufficient for the efforts extended by the staff of this unit.

F. J. W.
A. R. A.
D. L. B.

Introduction

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That, to secure these rights, Governments are instituted among Men . . .

(Declaration of Independence, 1776)

To the majority of ten generations of Americans, these fundamental national rights have been the essence of their existence. And yet to many, "Life, Liberty and the pursuit of Happiness" have been little more than an elusive dream.

This book is dedicated to one such group of Americans—seven million handicapped children. Sixty percent of these children are denied the special educational assistance they need. One million are denied entry to our public schools. Hundreds of thousands are committed to institutions and other programs where little more than physical sustenance is provided at costs far in excess of what education and rehabilitation would cost.

The personal anguish this situation brings to these children and their families cannot be measured—only felt. The impact of this situation on all of us is that, without appropriate education, many handicapped children will be an economic responsibility of the state for the remainder of their lives, while as productive citizens they could contribute economically and socially to the benefit of the nation.

Historically, handicapped children have turned to the Congress, state legislatures, and courts of the land to rectify these injustices. The children, their parents, and the persons who serve them have sought from the law the resources necessary to provide special educational services. And the law has responded, making it possible for growing numbers of handicapped children to receive the education they need. Rarely however, have governmental benefits established for these children full access to the right to an education. How easy it is for all to rejoice when one child receives an education and forget for the moment the many who wait. How easy it is to look to the future when the situation may improve, forgetting the millions of children whose futures are lost because they cannot be educated now.

The question today is not solely how many more handicapped children will be educated, but whether all handicapped children will be given equal protection of the laws and thus granted their right to the education they need. U.S. Commissioner of Education Sidney Marland said it well in a speech filmed for presentation at the opening session of the 49th annual convention of The Council for Exceptional Children:

> The right of a handicapped child to the special education he needs is as basic to him as is the right of any other young citizen to an appropriate education in the public schools. It is unjust for our society to provide handicapped children with anything less than a full and equal educational opportunity they need to reach their maximum potential and attain rewarding, satisfying lives.

This book is a guide, not a blueprint. It offers to those seeking legal change a direction, a rationale, and in the final chapter, a model. It is not the authors' intention to advocate that every state adopt this model, for we believe in the uniqueness of each state. At the same time, the principles and goals of the model cut across state boundaries and are applicable to every child.

State Law and Handicapped Children: Issues and Recommendations is the result of five years of research on the part of The Council for Exceptional Children. Sponsored by the Bureau of Education for the Handicapped, U.S. Office of Education, the research was conducted through the Analytic Study of State Legislation for Handicapped Children and more recently by the State-Federal Information Clearinghouse for Exceptional Children. We are most appreciative of the efforts by the staffs of these projects and by the hundreds of persons throughout the country who have contributed their time and knowledge.

Law must be a complex and ever changing institution, if it is to be relevant to the needs of the people it serves. The models and issues presented in this book relate only to the special legal provisions handicapped children need. Handicapped children are first of all children—entitled to all of the benefits and guarantees available to other children. Thus the reader should examine other areas of state law, to illuminate obvious discrimination and to assure equity in administration.

We also realize that because of the changing nature of education this book may be incomplete and hopefully will become outdated. But it is a beginning, and The Council for Exceptional Children pledges its continued assistance to those who seek to better the lives of handicapped children.

It is our hope that in the next few years, through your efforts, seven million handicapped children and their families will have the opportunity to experience the birthrights promised to all American citizens. For, as President Richard Nixon has noted, government must

> . . . do more than help a human body survive; it must help a human spirit revive, to take a proud place in the civilization that measures its humanity in terms of every man's dignity.

October 11, 1971

Dr. Jean Hebeler, *1971-72 President*
The Council for Exceptional Children

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Right to an Education

Background

America's first schools were parental or parochial enterprises and existed without public support. Local control of education, therefore, became firmly entrenched in America's educational heritage, with many of the early state constitutions making no specific reference to education or schools.

Today, however, each of the 50 states includes constitutional provisions for education. Since the authors of the U.S. Constitution made no direct reference to education it followed that the legal basis of authority for education developed as a power of the states.

As stated in the Tenth Amendment of the U.S. Constitution, "The powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states respectively, or to the people." In 1791 James Madison reasoned that "If the power was not given, Congress could not exercise it; if given, they might exercise it, although it should interfere with the laws or even the constitutions of the states." (Annals of Congress, 1791)

While education, historically and legally, has been a state function, the states have generally delegated much of the operative responsibility to local governments in the form of school districts. However, such districts are creations of the state and are thus controlled by the state for their existence and authority. *(Moore v. Board of Education of Inedell County,* 212 N.C., 499, 193 S.E. 732 1937) The last decade has been marked by the growth of the state role in education. This can be attributed partially to a greater dependence upon the state for the financing of public education. A recent California state supreme court decision *(Serrano, et al. v. Priest as Treasurer, et al.)* may prove to be the first step in placing total fiscal responsibility for education on the states. Another reason for the expanding state role in education is the growing number of education problems whose solutions may transcend local school district boundaries such as education of the handicapped, vocational education, driver education, etc.

School Exclusion

Although virtually all state constitutions provide education as a fundamental right guaranteed to the children of their state, many states have enacted statutory provisions enabling school authorities to exclude certain children from free public education. Judicial interpretations on the constitutionality of exclusion clauses have been limited, and the issue remains somewhat hazy.

In 1893 in *Watson v. City of Cambridge* (157 Mass. 561, 32 N.E. 864), a Massachusetts court ruled that the school committee could expel from school children who persisted in disorderly conduct "either voluntarily or by reason of imbecility." In 1919 the Supreme Court of Wisconsin considered the case of a handicapped child who was not a physical threat and was academically capable but who, because of his handicap produced "a depressing and nauseating effect on the teachers and school children" and took up an undue portion of the teachers' time. The court ruled in *State ex rel Beattie v. Board of Education* (172 N.W. 153, 169 Wis. 231) that "the rights of a child of school age to attend the public schools of the state cannot be insisted upon, when its presence therein is harmful to the best interests of the school." In 1967, however, Wisconsin Attorney General La Follette re-examined the Beattie case. He reaffirmed that local school authorities have the power to suspend or exclude a pupil, yet the obligation to provide children with a free public education does not cease upon exclusion and that other means for their education must be provided.

In *Fred G. Wolf, et al. v. The Legislature of the State of Utah* (Civ. No. 182646, 1969), Judge D. Frank Wilkens recently rendered a Third Judicial District Court of Utah decision concerning the denial of admission to the regular school system of two trainable mentally retarded children:

> Education today is probably the most important function of state and local governments. It is a fundamental and inalienable right and must be so if the rights guaranteed to an individual under Utah's constitution and the United States constitution are to have any real meaning. Education enables the individual to exercise those rights guaranteed him by the constitution of the state of Utah and the constitution of the United States of America.
>
> Today it is doubtful that any child may reasonably be expected to succeed in life if he is denied the right and opportunity of an education. In the instant case, the segregation of the plaintiff children from the public school system has a detrimental effect upon the children as well as their parents. The impact is greater when it has the apparent sanction of the law for the policy of placing these children under the Department of Welfare and segregating them from the educational system can be and probably is usually interpreted as denoting their inferiority, unusualness, uselessness and incompetency. A sense of inferiority and not belonging affects the motivation of a child to learn. Segregation, even though perhaps well intentioned, under the apparent sanction of law and state authority has a tendency to retard the educational, emotional and mental development of the children. The setting aside of these children in a special class affects the plaintiff parents in that under apparent sanction

> of law and state authority they have been told that their children are not the same as other children of the state of Utah which, to say the least, cannot have a beneficial effect upon the parents of these plaintiff children.

It would be inappropriate, therefore, to conclude that simply because the U.S. Constitution makes no specific mention of education, that it in no way relates to it or affects it. The Constitution protects citizens from any deprivation of life, liberty, or property without due process of law. As Judge Wilkens implies, of what value would be the First Amendment guarantees of freedom of speech, assembly, religion, and the press if an individual were to be denied an education?

As this book is being written, court action is in process of being initiated in state and federal courts throughout the country challenging, on the basis of the equal protection clause of the Fourteenth Amendment to the Constitution, the right of the state to exclude some handicapped children from an education. It appears that the exclusion clauses found so frequently in state law not only raise serious moral questions, but for the first time their legality is being seriously challenged.

According to Wallin (1924), special education programs developed initially in state schools and institutions. In 1823 Kentucky established the first state school for the deaf, and in 1832 the states of Massachusetts and New York established the first state schools for the blind. In 1846 the Massachusetts state legislature created the Massachusetts State School for Idiotic and Feeble-Minded Children. In 1848 and 1852, the legislature of Massachusetts and the legislatures of New York and Pennsylvania, respectively, appropriated funds for experimental programs in the education and training of mentally retarded children.

The first public day school program in special education was established in Boston in 1869 to educate deaf children. Providence, R.I., followed with the first public school class for the mentally retarded in 1896, and the first classes for the crippled (1899) and blind (1900) were established in the Chicago public schools.

As has just been described, special education development was limited during the latter half of the 19th century. This is attributed to the philosophy of education of the period—free access to all who could compete. The Georgia populist, Tom Watson, expressed this philosophy most dramatically: "Close no entrance to the poorest, the weakest, the humblest. Say to ambition everywhere, 'the field is clear, the contest fair; come, and win your share if you can!' " (Woodward, 1938)

However as Weintraub (1971) notes, "For many, this limited concept of equality of educational opportunity, coupled with the legal sanctions of cases such as *Beattie v. State Board of Education,* closed the educational door to those who could not compete in the fair race."

In the first part of the 20th century, there developed the beginning of public acceptance of the necessity to provide varied educational programs to meet the educational needs of all children, as the following 1910 report of the New York City Department of Education indicates:

> No longer can it be maintained that education at the public expense is to be directed solely to secure "the survival of the fittest," or even of the fit. One of the prime objectives of public education is to develop each child, fit or unfit, to his highest capacity, as far as conditions will permit, for the work and enjoyment of life.

Growth of Special Education

While initially such compensatory efforts were directed at acculturating the large number of immigrants to America, the principle was applied to other minorities including handicapped children and has resulted in the growth of public school programs for their education.

While special education had made significant advances by the mid 1920's, few children were served and programs were mostly limited to large cities. A 1922 study conducted by the U.S. Office of Education noted that there were 191 public school programs for handicapped children in cities with population in excess of 100,000. Legislation in New Jersey in 1911, New York in 1917, and Massachusetts in 1920 made it mandatory for local boards of education to determine the number of handicapped children in local school districts and, in the case of the mentally retarded, to provide special classes when there were 10 or more such children. Financial assistance in support of these programs was provided by the state. By 1915 Minnesota also provided state aid for children attending special classes, and a Pennsylvania law of 1919 contained provisions enabling local school districts to work cooperatively with other school districts to provide special education. Oregon enacted permissive statutes in 1923, providing classes for "educationally exceptional children" including the gifted child. In 1948, 1,500 public school systems reported special education programs, the figure growing to 3,600 in 1958 and 4,600 in 1963. Eight thousand additional school districts, according to Mackie (1965), contracted for special education with neighboring districts.

Placing emphasis upon numbers of operational programs obscures the more fundamental issue of the number of children not being provided educational services. Studies by the U.S. Office of Education disclose that in 1948, 12 percent of the handicapped were receiving special education. In 1963, 21 percent were being served, while in 1967, the figure had grown to 33 percent. This year the percentage has grown to about 40 percent. The number of children being served within the 50 states has been shown to have unexpectedly high variability.

Chalfant (1967) observed that school districts having a large population base tend to provide special education services, while special education services in predominantly rural areas face severe administration problems. Secondly, he observed that special education services tend to exist only if the local community is able to support such services. In other words, special education often exists as a program "bonus" rather than as an integral part of a school district's instructional curriculum. Chalfant also pointed out that school districts experiencing rapid population growth also experience an educational lag, minimizing available resources for special education programs.

Title VI of the Elementary and Secondary Education Act reports for school year 1968-69 (SFICEC, 1970) indicate enormous variation in the percentage of handicapped children being served from state to state. Nineteen states, for example, were serving less than 31 percent of their handicapped populations, and 11 states were serving 20 percent or less. Only seven states served in excess of 51 percent of their handicapped children during school year 1968-69. The states show an even greater variation in terms of the number of children served according to area of disability. Thirty states, for instance, were serving less than 11 percent of their emotionally disturbed school children.

Handicapped children are a minority in education, and programs of substance in the states did not emerge until legislative statutes specified their organization. Although the constitutional and legal basis of a child's right to an education is increasingly evident in judicial interpretations of federal and state constitutions, most handicapped children remain disenfranchised.

Status

Constitutions are essentially the written covenants of fundamental law establishing the government of the states. They allocate powers and express their limitations. The basic elements of the covenant include a preamble to describe the nature and purpose of government; a bill of rights for citizens; articles describing the powers and limitations of executive, legislative, and judicial structures; and a provision for amending and revising the constitution.

A review of basic constitutional provisions establishing public education reveals that these provisions fall into three categories of emphasis. The language of the basic provisions tends to focus on a) establishing the "educational enterprise," b) educating children, or c) disclaiming responsibility for educating certain handicapped persons.

The state constitution of Texas illustrates a constitutional provision establishing a statewide educational enterprise:

> A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools. (Article VII, 1)

Connecticut, in somewhat unique fashion, does not charge the legislative body with the duty of establishing the educational enterprise:

> The fund, called the school fund, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the state, and for the equal benefit of all the people thereof. (Article VII, 2)

In a second category of state constitutional provisions, the language explicitly provides for the education of all children residing in the state. The constitution of Utah establishes a system of public schools open to all children:

> The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control. (Article X, 1)

South Dakota's constitutional provision establishing education also typifies the "child centered" orientation:

> The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education. (Article VIII, 1)

Considerable variation may be found in the state constitutions with respect to the various provisions for education. Some of the provisions are progressive and in keeping with the times, as in the preceding Utah provision. Many, however, are antiquated and inadequate to the extent of impeding educational progress for handicapped children. It is indeed unfortunate that some state constitutions contain basic provisions establishing public education yet disclaim responsibility for educating certain handicapped persons. The Delaware constitution establishes a system of free public schools for all children with the exception of the physically and mentally disabled:

> The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools and may require by law that every child not physically or mentally disabled shall attend the public school unless educated by other means. (Article X, 1)

The state of New Mexico disclaims children of "insufficient" physical and mental ability in its constitutional provision relating to compulsory school attendance:

> Every child of school age and of sufficient physical and mental ability shall be required to attend a public or other school during such period and for such time as may be prescribed by law. (Article XII, 5)

The compulsory school attendance provision in the Idaho state constitution while more vague than that of New Mexico also implies the power to exclude children of "insufficient" mental and physical ability:

> The legislature may require by law that every child of sufficient mental and physical ability shall attend the public school throughout the period between the ages of six and eighteen years, for a time equivalent to three years unless educated by other means. (Article IX, 9)

Despite the fact that state constitutions call for the education of all children, all states have compulsory attendance laws which define the children who must attend school and also those who may be excluded from school. Generally, these laws exclude children in the following ways:

> Children with bodily or mental condition rendering attendance inadvisable. . . . (Sec. 14.30 Alas. Stats.)
>
> A child's physical or mental condition or attitude is such as to present or render inadvisable his attendance at school or his application to study. . . . (NRS Sec. 392.050)
>
> Blind, dumb, or feeble minded children for whom no adequate provision has been made for instruction by the school district. . . . (VACS. Art. 2893)

As a result, approximately one million handicapped children have been denied an education.

Recommendations

In 1954, the United States Supreme Court ruled:

> In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it is a right which must be made available to all on equal terms. (*Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873)

Yet today there are handicapped children who are being denied an education through the official legal and administrative policies of state and local governments.

Several years ago the Fourth Congress of the International Congress of the International League of Societies for the Mentally Handicapped adopted as its theme, "From Charity To Rights." Abeson and Weintraub (1971) note that historically, public education for handicapped children has been perceived by many as a charitable contribution of government. However, such charity does not imply responsibility. So it has made little difference to government whether some children were excluded from an education or whether those in school received the education they needed.

Today there is a definite movement by all branches of government throughout the nation to extend educational opportunity to handicapped children. This movement reflects, to some degree, the growing concern of such bodies about rising welfare and institutional costs and the economic savings to government if the handicapped become tax producers instead of tax consumers. It also reflects the increasing advocacy role on behalf of its citizens. But even more dramatically, the changing emphasis is a result of the growing militancy on the part of parents, professionals, and other concerned individuals who seek, through government, the right to an education for these children.

The pattern of recent judicial and legislative actions indicates that the issue facing government today is not whether handicapped children are entitled to an education, but how government can make such education a reality. Succeeding chapters of this book will detail some of the problems and solutions to this issue.

It is important that states, in addition to establishing appropriate systems for the delivery of services, also remove obvious discriminatory provisions in laws and regulations and that they create new legal and administrative policies to reflect the intent to educate all handicapped children.

Therefore it is recommended that: Provisions in compulsory school attendance laws to exclude handicapped children from public education be repealed.

Statements declaring it to be the policy of the state that all handicapped children be educated should be included in the state school laws and administrative codes. Since full implementation of such policy will require changes in the present behavior of many persons throughout the state, education officials (governors, chief state school officers, local school superintendents, etc.) should issue public statements endorsing such policy and detailing procedures for its implementation.

Population

Background

The nature of "treatment" provided to the handicapped has varied over time and in different societies. The Greeks of Sparta left their crippled to die on mountainsides, and in the early Roman empire persons who did not act in a normal manner were considered incompetent. (Heiny, 1971) Concurrently in China, blind persons were valued as soothsayers. (Heiny, 1971)

Recent evidence collected by Gellman (Cruickshank, 1971) indicates that throughout the country today, prejudice towards the disabled exists at all socioeconomic levels. He also found that handicapped persons with mild disabling conditions are better accepted in America than those with severe handicaps.

Recognition of the importance of public attitudes toward the handicapped has led to extensive public awareness efforts designed to emphasize that differences among people are normal and acceptable.

In part, the cycle of labels and definitions assigned to the handicapped reflects the way in which these persons have been perceived at various times and places. As a result, there is a continuous effort by those who are concerned about the handicapped to use labels which suggest normalcy and thus greater acceptance. Much of the impetus for changing the definitions and labels has come from the many governmental, professional, and lay interests which serve the handicapped. Perhaps the biggest and most tragic problem occurs when decisions are made about persons not on the basis of their behavior or needs but on the label which they have been assigned. Today, while there is confusion over some of the terms, labels and definitions are becoming more flexible to reflect actual functioning of the handicapped rather than the disabling condition.

Edgar A. Doll (1955), a major contributor to the education of the mentally retarded, said:

> Changes are reflected in new modes of expression which indicate the alteration in thinking and values. As the term "feebleminded" gave place to "mentally deficient," so this in turn has changed to "mental retardation."

These changes in terminology show a drift away from precise clinical diagnosis toward more general appraisal of the child as a person in "softer words and with more generally descriptive evaluation of total aptitudes."

The status of terminology relating to the mentally retarded is best described by Dybwad (Rothstein, 1964):

> Until recently the terms moron, imbecile, and idiot were used to denote degrees of impairment. Because of the unhappy connotations these words had assumed, the terms mildly retarded, moderately retarded, and severely retarded have been substituted. Another new terminology speaks functionally of these groups as marginally independent, semidependent, and totally dependent. With the increasing emphasis on educational programs the mildly retarded are often referred to as educable, the moderately retarded as trainable. The term feeble-minded has fallen into disuse altogether.

In the last decade, a group of children who possessed reading or other major learning problems were singled out for classification by the use of 38 different terms. Today many of these terms are no longer used. Now frequently referred to as those with "learning disabilities," these children are defined by federal law as follows:

> The term "children with specific learning disabilities" means those children who have a disorder of one or more of the basic psychological processes involved in understanding or in using language, spoken or written which may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage. (P. L. 91-230 The ESEA Amendments of 1969, Title VI, The Education of the Handicapped Act)

The definition clearly reflects the movement to considerations of behavior. The definition of mental retardation reinforces this trend. "Mental retardation refers to subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior." (Heber, 1961)

One purpose of definitions is to present a baseline which can be used to determine the various categories of specific handicaps. Because labels and definitions change, estimates of the numbers of children with certain handicaps cannot be considered precise. Another complicating factor is the differing compulsory ages for school attendance in the states.

Despite these limitations, incidence figures are of value to guide planning. More accurate figures can be obtained through various means of census procedures as discussed in Chapter 3.

Generally, a handicapped child is described as one ". . . who deviates from the average or normal child in mental, physical, or social characteristics to such an extent that he requires a modification of school practices or special educational services, in order to develop to his maximum capacity." (Kirk, 1963)

These children generally include the mentally retarded, physically handicapped, visually handicapped, hearing handicapped, emotionally disturbed, speech handicapped, learning disabled, multiply handicapped, and other health impaired. Estimates of the numbers of handicapped children (made by the states and reported to the federal government under Title VI of the Elementary and Secondary Education Act for 1968-69) indicate that there were six million such children. Less than one-half were receiving the special services they required. The following chart taken from the same data indicates the estimated number of children by disability, the number served, and the percentage served.

Handicapped children are generally said to represent about 10 to 12 percent of the total school age population. The figures must be increased, however, to reflect the growing trend to serve the handicapped as early as possible. This results in the addition of about one million children. (Martin, 1971)

Preschool education for the handicapped is receiving increased emphasis. In 1968 the National Advisory Committee on Handicapped Children reported the following:

> The committee is aware that research on the education of preschool children has demonstrated that early education can accelerate social and mental development of handicapped children. On the other hand, lack of educational attention to preschool handicapped children tends to increase the negative effect of mental and physical disabilities as the child becomes older.

The Committee further comments that specialized programs for preschool children have long been advocated for the deaf and the blind, but that provisions for other handicapped children at the preschool level are conspicuous by their absence. Some states do not even operate kindergartens for non-handicapped children. Some states which operate kindergartens refuse admission to children who are physically or mentally handicapped. In August, 1971, during court hearings on a Pennsylvania statute restricting school entrance to children until they attain a mental age of 5.7 years, James J. Gallagher, former Associate Commissioner for the Bureau of Education for the Handicapped, indicated that some specialists believe that 80 percent of a child's intellectual capacity occurs by the time he is age five. To deny schooling to children suspected of being slow to attain that goal, Gallagher said, is to render many of them handicapped for life.

Status

Within state laws, four patterns are used to indicate those children eligible for special education programs. The major difference in the laws is the degree of specificity in the descriptions of the various categories of handicapped children.

Table 1 Handicapped Children by Disability Receiving an Education

	TMR	EMR	HH	D	SI	VI	ED	C	OHI	MH
Estimated Number of Handicapped Children	191,063	1,147,803	260,981	45,681	2,145,647	64,718	749,441	183,802	1,089,147	35,838
Number of Handicapped Children Being Educated	109,175	594,646	44,430	20,771	1,122,232	22,718	99,400	63,450	165,589	9,242
Percent of Handicapped Children Being Educated	57%	52%	17%	45%	52%	35%	13%	35%	2%	26%

Key

TMR —trainable mentally retarded
EMR —educable mentally retarded
HH —hard of hearing
D —deaf
SI —speech impaired
VI —visually impaired
ED —seriously emotionally disturbed
C —crippled or orthopedically handicapped
OHI —other health impaired (includes learning disabled)
MH —multiply handicapped

(SFICEC, 1971)

The most specific laws create and define specific disability categories. An example is the following statute from South Carolina:

> Emotionally handicapped children means children of legal school age with demonstrably adequate intellectual potential, who, because of an emotional, motivational, or social disturbance are unable to benefit from or participate in the normal classroom of the public schools, but who may be expected to benefit from special instructional services suited to their needs. (Sec. 421-295 S.C. Stats.)

The most common state laws list categories of children who are eligible. While these laws mention categories, they do not attempt to operationally define them. The following law from Kansas is an example:

> "Exceptional children" means children who (a) are crippled; or (b) have defective sight; or (c) are hard of hearing; or (d) have an impediment in speech; or (e) have heart disease; or (f) have tuberculosis; or (g) have cerebral palsy; or (h) by reason of emotional and social maladjustment or intellectual inferiority or superiority do not profit from ordinary instructional methods; or (i) are unable to attend the regular public school classes with normal children by reason of any physical or mental defect. (KSA 72-5334)

A similar type of law exists in West Virginia. In addition to categories, the law also provides the power for the state superintendent of schools to make any other exceptional child eligible for special education service. This section of the West Virginia law is as follows:

> . . . visually impaired, hearing impaired, physically, or orthopedically handicapped, epileptic, mentally retarded, speech handicapped, multiply handicapped, autistic, intellectually gifted, socially or emotionally maladjusted including the delinquent, learning disabilities both physical and psychological, and any other areas of exceptionality which may be identified and approved by the state superintendent of free schools. (Sec. 18-20-1 WVCA)

The third type of law on definitions is flexible, as typified in New York which defines the handicapped child as "one who, because of mental, physical, or emotional reasons cannot be educated in regular classes but can benefit by special services. . . ." (Sec. 4401 N.Y. Stats.) This law, passed in 1967, was designed for multiply handicapped children who, under traditional categorical definitions, can be declared ineligible for program participation. For example, a deaf-blind child, because of a double handicap, may be ineligible for programs because he does not fit into any one category.

Finally, the fourth type of law establishes authority for special education and designates a state agency to develop definitions of children who are eligible for services. The following Maryland law is an example: "It shall be the duty of the State Board of Education to set up standards, rules and regulations for the examination, classification, and education of such children in the counties of the state who can be benefitted under the provisions of this subtitle." (Sec. 77-241 ACM) The degree of flexibility provided within this type of law is totally dependent on the manner in which the rules and regulations are developed and followed.

Determination of eligibility of handicapped children for educational programs is not made solely on the basis of categorization. Traditionally, education programs for the handicapped have been primarily limited to children of legal school age. Within recent years, however, marked changes have occurred to increase the range of ages. The impact of research demonstrating the value of preschool programs has motivated many states to lower the school "entry ages" for the handicapped. Some states have extended the age limit to 21 and in at least one case, to age 24. (KSA 72-5342)

In response to the mounting evidence of the successes of early education for the handicapped, some states have passed laws which specifically remove minimum age requirements. Idaho has this kind of law. "Every public school district in the state may provide instruction and training for persons within the various school districts of the state to the age of twenty-one (21) years who are exceptional children. . . ." (Sec. 33-2001 Idaho Code)

Connecticut law provides no minimum age but indicates that special education programs may be conducted for children "who have not attained school age but whose educational potential will be irreparably diminished without special education at an early age." (Sec. 10-76 Conn. Stats.)

California law permits the operation of experimental programs for deaf and severely hard of hearing children from age 18 months to three years. (Sec. 6812-5 Cal. Stats.) Similarly in Indiana, experimental programs may be established for deaf children as young as six months. (Ch. 395 Acts of Indiana 1969)

More than half of the states presently authorize programs for the handicapped until age 21. In Kansas, handicapped youth unable to complete their education by age 21 are eligible to continue to receive special education services until they reach 24. Students at the state school for the deaf in Iowa may have the usual age limit of 21 extended to age 35 if special circumstances exist. In other states such as Ohio and Oklahoma, no maximum age is stated for the provision of special education services.

Recommendations

Children who have handicaps may be legally referred to as exceptional in one state and handicapped in another. Each of these children may possess a specific disability whose label may also vary from state to state.

If a child has limited intellectual potential he could be retarded, mentally deficient, or subnormal, depending on where he lives. If he can't hear well he might be deaf, auditorially handicapped or hearing impaired. If he has a behavioral problem he could be labeled emotionally disturbed or maladjusted, psychotic, autistic, delinquent, and educationally or mentally handicapped. If he has difficulty seeing he might be called blind, visually handicapped, or visually impaired. And if he has learning difficulties he might be brain-injured, perceptually handicapped, dyslexic, suffering from minimal cerebral dysfunction or a learning disability. If he suffers from more than one of these or other problems, he may be referred to by a combination of terms or more simply as multiply-handicapped.

All societies establish systems to classify their various groups and then apply classification labels to group members. Classification has two purposes.

The first is to allocate resources to the appropriate group. For example, a governmental agency wishing to make available a limited number of braille books will probably specify the appropriate criteria for potential readers of the books and will affix a label to them. The important element is that the classification is created for the benefit of its members and often at their initiation.

The second reason for classification of people is society's propensity toward stigmatizing those who deviate from the norms of society in some manner. The handicapped have always lived with stigma and the related labels and prejudices.

The dilemma facing special education today is how to deliver the appropriate resources to children in need, without further stigmatizing them beyond the societal stigma.

Although the solution is beyond the purview of this book and the knowledge of the authors, state law and regulations can help decrease the magnitude of the problem. Perhaps the worst form of stigma is that which is governmentally sanctioned. As described in Chapter 1, government has stigmatized some handicapped children by publicly excluding them from an education, by providing for the education of others in second class facilities with inadequate materials and personnel, and by classifying children with labels that often have little relationship to the services required.

Imagine the social and psychological impact on a child who needs special assistance to learn to read, when he has been labeled brain-injured and placed in a special class located in an old bus garage, behind the new building where his friends attend school.

As long as public resources are limited, classes of people will be labeled. The issue is not removing all categorization from state laws and regulations, but to minimize its usage as much as possible and to use labels that relate to the educational services required.

Therefore it is recommended that: Each state carefully reexamine its present system of defining and classifying children to ascertain if the *system stigmatizes children beyond that which is necessary and whether the system is related to the educational needs of the child.*

The great American myth that education begins at age six is dead or at least gasping its final breaths. Headstart, Sesame Street, kindergartens and extensive research have demonstrated clearly the importance of education in the early years of childhood.

For many children such learning takes place in the home, but for some children, particularly the handicapped, this may be insufficient. Early learning is primarily focused on the child's exploration of his environment and learning the language skills. But for the young blind child, learning may be quite limited. If he were given mobility training and opportunities to explore, he would learn. And yet he often has to wait until age six or later to begin the learning process. Early childhood programs for education of the handicapped, including those beginning at birth, are clearly demonstrating that many handicapped children can become "normal" learners, if given a chance. Yet too few states have taken steps to initiate state wide leadership programs.

Similarly, little has been done to serve older handicapped youth. Most compulsory school attendance laws have as their upper range ages 16 to 17. Many handicapped youth of this age group, particularly the mentally retarded, find their education abruptly terminated, despite the fact that many could continue to profit from more schooling.

Therefore it is recommended that: State laws be amended to authorize the provision of educational services to handicapped children and youth from birth to age 21.

Identification and Placement

Background

Handicapped children are children with differences. It is the business of educators working with these children to recognize and assess their learning differences, and then to develop techniques and strategies to enable them to learn to their greatest potential. Because of variations in the many types of disabilities, "It is essential that these differences be carefully evaluated to ascertain to what extent special educational facilities are required." (Cruickshank and Johnson, 1958)

In the past, many school districts organized special classes for all children who for any reason were not effectively performing in the regular classrooms. These programs were sometimes designated "opportunity classes" or simply "special classes." Their true nature is indicated by the term, "dumping grounds," today often used to describe the failure of the classes. Little concern was placed on determining why these children had difficulty in the regular classes and on determining what special assistance was needed.

Currently there is a three-level process used to identify and place handicapped children in programs. The first step is screening, often conducted by nurses when children first enter school. While this early screening is usually done in large groups, more individual testing is conducted during follow-up examinations of those children who appear handicapped in some way. At this level there are a variety of tests relating to health, intelligence, personality, and learning performed by a variety of personnel. After consideration of the test results, decisions are made about placement of the child in an appropriate educational program.

Many of the procedures used in initial identification and evaluation are considered valid and reliable. While this is primarily true for physical examinations, tests to assess personality and intelligence are more difficult and often controversial.

There are many serious questions about intelligence testing and the relationships between the results of those tests and the "life" decisions that are made about children. These issues directly relate to sometimes incorrect determinations that some children are learning disabled or mentally retarded.

Identification

Binet developed the first intelligence test in 1904 to identify those children who would find the academic demands of the French public schools beyond their abilities. Students of psychologist G. Stanley Hall translated Binet's tests into English and nurtured their use in America. Hunt (1961) contends that the testing movement came to America via people who believed in the concept of fixed intelligence and, ". . . at least partially for this reason the belief has tended to dominate the testing movement." The assumption held by developers of intelligence tests that measures of pure intelligence could be formulated receives no support today among psychologists who are aware that intelligence does not blossom in vacuo.

Perhaps no single concept has been as highly implemented and criticized as IQ. Intelligence tests sample a very limited number of intellectual processes, isolate mental functioning from motivation and contain a large amount of social and cultural bias. Yet, in application, these scores remain relatively unchallenged as a point of reference for educators. As a presumably accurate measure of intellectual potential, the IQ test has wielded a powerful influence in determining which child, for example, enters the regular education program and which is placed in special classes for the mentally retarded.

Consider the implications of *Diana v. State Board of Education.* (C-70 37 RFP Dist. Ct. No. California, 1970) The California State Board of Education reported that the incidence of mental retardation in the U.S. never exceeds two percent and that any claim in excess "is spurious." (1970) A study by Mercer (1967) found California Mexican-American students consistently over-represented in special education classes by a margin of two to one. Diana, an elementary student, had scored only 30 on the intelligence test that was administered to her in English at school. In the Spanish version administered by an outside bilingual psychologist, she scored 49 points higher, well above the cut-off for classification as educable mentally retarded. Examination of eight other Mexican-American children accustomed to Spanish in the home and selected randomly from educable mental retardation classes disclosed that all but one scored above the cut-off of 75.

By stipulated agreement, the state board of education consented to conduct a study of the home environment of identified children, hold conferences with parents, and make placement decisions through use of a multidisciplinary staffing committee rather than a single test administrator.

Following *Diana* the California legislature enacted the major provisions of the stipulation into law and provided funds to the state board of education to develop tests that are more relevant to the varied environments in which children live.

Presently there are many other psychological instruments available which can provide considerable psychometric information about a child's present level of functioning. The problem, however, is still more in how the tests are used than in their content.

Many persons working with the retarded have long been aware that it is inappropriate to define intelligence solely in terms of IQ. They recommend identification of mental retardation on the basis of adaptive behavior as well as general intellectual functioning. Adaptive behavior, according to Heber (1961), is related to three variables: maturation, learning, and social adjustment. Utilizing these additional criteria to assess intellectual potential makes it necessary to obtain a broad scope of data in order to arrive at more realistic educational expectations of a child.

Census

The concept of a registry or census of all handicapped children or children likely to become handicapped is not new. Neither is it free of operational problems. Virtually all states indicated that their inability to determine who handicapped children were and where they lived seriously limited efforts to plan for the handicapped pursuant to P.L. 88-156, the Maternal and Child Health and Mental Retardation Planning Amendments of 1963. However, many state and local census attempts predated P.L. 88-156.

Often early attempts to conduct a census were done through physicians. While this approach has been successful in identifying physically handicapped children, a 1965 Delaware study noted that pediatricians "see only about 25% of all the children in circumstances where it is possible to form judgment regarding the mental potential of these children." It is difficult to identify very young children who have minimal problems of intellectual functioning. Kirk (1962), in demonstrating that formal preschool training is of tremendous benefit to the handicapped, also reported great difficulty in locating the mildly retarded preschooler.

The medically oriented census has been gradually expanded at the state level to include input from a variety of agencies having contact with handicapped children.

The school census has been a standard procedure for enumerating handicapped children. The mental retardation state plans of New York (1965) and Delaware (1965) indicated the existing system of school census was very inefficient, and both states recommended strengthening the census to assure reporting of all handicapped children from birth to age 21.

Attempts to coordinate census procedures have involved many public and private agencies. All of these efforts have been plagued by critical logistical and financial limitations.

Hunt and Huyck (1965) report that in 1964, more than 10 per cent of all nonwhite mothers in the U.S. gave birth without a physician in attendance. The rate exceeded 20 percent in several Southern states. Many of these children, now entering elementary school, possess handicaps which are undetected due to the absence of any professional or medical contact. Unfortunately, a comprehensive census of all handicapped children which could have identified those in need of help, has been too costly to conduct.

The issues of privacy and dignity of the individual also create many problems. The Task Force on Law of the President's Panel on Mental Retardation (1963) noted that privacy and dignity of the disabled are very difficult to preserve. Because some persons attach a stigma to those who are handicapped, the task force recommended that judicial and administrative procedures be adopted to protect the privacy of the handicapped person and his family as much as possible.

A census of the handicapped can report more accurate information for those with certain disabilities than for those with other handicaps. In general, those handicapping conditions which can be observed with the eye or ear tend to be reported more frequently to educational, clinical, health, and welfare agencies than mental and behavior conditions despite the fact that the latter affect a greater proportion of the public.

Screening and Re-evaluation

In the schools, screening techniques and instruments help to locate children who may experience learning difficulty and need special assistance. At an early stage of the total evaluation process, behavior of the child is observed and inferences are made as to what Newland (1971) describes as "learning-processes, emotionality, achievement or aptitudes." Newland points out that group intelligence tests "have their major value for the initial identification of the mentally superior; have decreased screening value (but still practical) with respect to the mentally retarded; and are of still less screening value in reflecting verbal learning capacity as we go from the socially and emotionally maladjusted to the speech-impaired, the sensory handicapped and the seriously involved orthopedically handicapped."

While screening will discover many children appearing to need special services, many children will be improperly diagnosed. Poorly trained screening personnel and the lack of follow-up after screening have often set in motion a rigid process in which children are "tracked" into acquisition of unnecessary labels and then placed in inappropriate educational environments. It is of paramount importance for frequent re-evaluation based upon the concept of maintaining handicapped children in a regular school situation as much as possible. The flexibility to enter, leave, and re-enter both special and regular school programs must be provided.

A growing body of case law is rapidly developing in the technique and procedure of educational placement. In *Hobson v. Hansen* (269 F. Supp. 401, 1967), Judge J. Skelly Wright held the system of educational placement in the Washington, D.C., schools illegal and ordered its abolition. Under the "tracking" system, students were given intelligence tests in the elementary grades and placed in honors, general, or special education classes on the basis of their test scores. The *Hobson* decision cited the placement procedure as a violation of the equal protection clause of the U.S. Constitution.

Stewart v. Philips (Civil Action No. 70-1199-F D.C. Mass., Feb. 8, 1971) made far-reaching implications for placement procedures. Citing *Wisconsin v. Constanteneau* (91 S. Ct. 507, Jan. 19, 1971), where the U.S. Supreme Court held that the state violates due process of law when its action has the effect of stigmatizing a person, the Massachusetts District Court ruled that a child may not be placed or retained in a special class without a hearing.

Litigation like *Diana, Hobson,* and *Stewart* yield guidelines for placement procedures, emphasizing that the due process rights of children and their parents demand the right to a hearing and frequent re-evaluation.

Status

The purpose of providing special educational assistance to handicapped children is to enable them to achieve to their full potential. Most professionals realize that the earlier special services can be provided, the greater is the opportunity to influence the ultimate role of children in society. To achieve this objective, effective systems of census taking, identification, screening, placement, evaluation, and re-evaluation need to be implemented.

Identification and Reporting

In some states, this process of identifying and maintaining records on handicapped children begins shortly after birth. Although the responsibility may be assigned to various agencies, it most often is located within the state health agency. For example, Massachusetts assigns this responsibility to the department of public health.

> Within ten days after the date of birth of any child in the Commonwealth with a congenital deformity or birth injury which may lead to an incapacity or disability, the hospital wherein such birth occurred shall report such congenital deformity or injury to the department on a form to be furnished by said department. The contents of such report shall be solely for the use of the department and such report shall not be open to public inspection or constitute public record. (Ch. 111 Sec. 673 Mass. Gen. Laws)

Many states have school health laws which contain a standard provision requiring every local administrative unit to identify and report children suffering from various physical defects and to report such defects to the parents or guardian for "correction" or further evaluation. The following Maine law is a good example:

> The Superintendent, the school committee, or school directors of administrative units shall cause every child in the public schools to be separately and carefully tested and examined at least once in every school year to ascertain whether he is suffering from defective sight or hearing or from any other disability or defect tending to prevent his receiving the full benefit of his school work or requiring a modification of the school work in order to prevent injury to the child or to secure the best educational results. The committee, or school directors, shall cause notice of any defect or disability to be sent to the parent or guardian of the child, and shall require a physical record of each child to be kept in such form that the commissioner shall prescribe after consultation with the department of health and welfare. (RSM Sec. 41-62)

The chief variation among laws of this type is the assignment of who identifies and reports the child. In most states, this responsibility is given to the classroom teacher. In Colorado, for example:

> Every teacher in the public schools shall report the mental, moral and physical defectiveness of any child under his supervision as soon as such defectiveness is apparent, to the principal, or where there is no principal, to the county superintendent. (Sec. 123-23-17 CRS)

In West Virginia, the teacher is given even more specific responsibility:

> A state-wide school census of . . . mentally and physically handicapped persons of all ages shall be made during the first week of the school term. . . . and at a corresponding time each five years thereafter. The school census shall be taken by the teachers under direction of the county superintendent. . . . (Ch. 18 Sec. 1814 WVCA)

Virginia law also places the responsibility on "the principal or teacher" but restricts identification to children with vision and hearing problems.

> The Superintendent of Public Instruction shall prepare or cause to be prepared, upon the advice and approval of the state board of health, suitable test cards, blanks, record books, and other needed appliances, to be used in testing the sight and hearing of the pupils in the public schools, and shall also obtain necessary instructions for the use thereof; and shall furnish the same free of expense to all the schools of the state, upon request of school board of any county, or city, accompanied with the statement from the clerk thereof, that the board had, by resolution, adopted the use thereof in the schools under their charge. Within fifteen days after the beginning of the term, or after receiving such material, the principal or teacher in all such schools shall test the sight and hearing of all the pupils under their charge, and keep a record of such examinations in accordance with instructions furnished. Whenever a pupil is found to have any defect of vision or hearing, or disease of the eyes or ears,

> the principal or teacher shall forthwith notify the parent or guardian, in writing, of such defect, with a brief statement thereof. Copies of the report shall be preserved for the use of the Superintendent of Public Instruction as he may require. (Sec. 22-248 Code of Va.)

To rectify problems of data collection and use, some states have created specific provisions within their special education laws. The following is an example from Alabama:

> . . . each school board in the State of Alabama shall take a careful and thorough survey of persons who (if thereafter certified by a specialist) would probably qualify as exceptional children residing in its school district, which survey shall show the name, age, sex and type of exceptionality of each exceptional child found by it. All such data descriptive of an individual person (as contrasted with compilations made therefrom which do not reveal information about specific individuals) shall be maintained in strict confidence and shall not be made available to anyone except to the survey-takers (in connection with those individuals who are reported by them), the appropriate superintendent and his staff, the appropriate school principal, the individual child's parent or guardian, and such other persons as may be designated in regulations adopted by the State Board of Education and under such conditions as may be provided therein. (SB 13 Acts of 1971)

Massachusetts law is noticeably different, because it involves the collection of census data by the commissioner of education with assistance from other agencies:

> The commissioner of education shall conduct an annual survey with the cooperation of the supervisor of special schools and classes and the director of the division of the blind, and with such other assistance as he may deem necessary to determine the number of blind children in the commonwealth. (Ch. 69 Sec. 33 Mass. Gen. Laws)

The laws of the states do not have uniform provisions for the frequency of census taking of handicapped children. While Massachusetts requires an annual census, Alabama is on a periodic basis. The following Delaware law provides for continuous census taking:

> The principals, superintendents, teachers, and visiting teachers in every school district, in accordance with the rules of procedure prescribed by the State Board of Education, as it may direct, on or before the 15th day of May of each year, and thereafter throughout the year as new cases are discovered, every child within any school district between the chronological ages of 4 and 21, who because of apparent exceptional physical or mental condition, is not now being properly educated and trained, and thereafter the State Board of Education, as it may direct, with the aid of cooperating agencies, shall examine such child and report whether the child is a fit subject for special education and training. (Section 3105 DCA)

When operating effectively, census procedures identify children who may need special educational assistance. The final decision occurs only after a child is carefully and thoroughly evaluated. State laws pertaining to evaluation vary in the amount of specificity of procedure mentioned. While language is included in some states, others specify responsibility for final decision making, review of procedures, and tests to be used.

Analysis of evaluation and placement statutes reveals a number of different elements which need consideration. In many of the state laws, evaluation and placement are discussed in the same sections. An example of this type of law is the following from Alaska:

> 1. The parent or guardian of the child or the local administrator of special education may submit the application. If the administrator submits the application, he must have the full knowledge and consent of the parent or guardian.
> 2. The application is submitted on forms provided by the department of education to the governing body of the local district. The school board shall forward the application to the commissioner of education.
> 3. After the child has undergone an evaluation that is defined by the regulations of the department by qualified personnel to determine whether or not the child is capable of benefiting from enrollment in special education, the commissioner is responsible for final certification of a child for special education services. (Sec. 14.30. 330 Alas. Stats.)

A common element in evaluation and placement laws is the designation that personnel must be qualified. Within the definitions section of the Florida law, it is stated, "The term exceptional children as used in the Florida school code means any child or youth who has been certified by a specialist qualified under regulation of the state board of education to examine exceptional children. . . ." (Sec. 288.041 Fla. Stats.) Michigan law says that physically handicapped and emotionally disturbed children may not be enrolled in a special education program except with a certified diagnosis "by competent and appropriate professional authorities acceptable according to the standards of the superintendent of public instruction." (Sec. 340.771 and Sec. 340.775A CLM)

Other states specify the type of specialist who will certify. Arkansas law specifies, for example, that handicapped children will be "determined by competent medical authorities." (Sec. 80.2102 Ark. Stats.) Similarly, Colorado law specifies that the "determination of the physical handicap of a child shall be made by an individual examination conducted by a licensed physician." (Sec. 123-22-7 CRS)

Many states specify that prior to placement in classes for the mentally retarded, a child must be examined by a qualified psychologist. Nebraska, for example, has this type of provision:

> A trainable mentally retarded child shall mean a child who is mentally retarded but who, as indicated by a diagnostic evaluation, including an

> individual psychological examination administered by a person holding valid Nebraska examiner's credentials for administering psychological examinations as issued by the State Department of Education. . . . (RSN 43-612)

Legal language specifying the type of test to be included in the selection and placement procedure is unusual. The California legislature, after the decision made in the *Diana* case, enacted the following law:

> Before any minor is admitted to a special education program for mentally retarded minors established pursuant to this chapter, the minor shall be given verbal or non-verbal individual intelligence tests in the primary home language in which the minor is most fluent and has the best speaking ability and capacity to understand. Such tests shall be selected from a list approved by the State Board of Education. (Sec. 6902.06 Cal. Stats.)

Louisiana law is somewhat unique regarding evaluation and placement because it assigns partial responsibility for these activities to special education centers located in state colleges and universities:

> Special education centers located in state colleges and universities are designated as the competent authorities for the evaluation of handicapped and other exceptional children in the public schools.
>
> In parish and city school systems served by one or more college special education centers, it is hereby established that such special education centers are designated as the competent authorities for the psychological and educational diagnosis and evaluation of handicapped and other exceptional children, and that pupils may be assigned to such special classes or facilities only upon the recommendation of said special education centers or other persons or agencies approved by the State Department of Education.
>
> In parishes or city systems not served by a college or university special education center, pupils may be assigned to special classes or facilities only upon the recommendation of other competent authorities approved by the State Department of Education. (LRS Sec. 1950)

Re-evaluation

Some states specify that periodic re-evaluation of children placed in special programs must occur. Arizona law, as an example, provides:

> The placement of a child in a special education program shall be reviewed by the chief administrative official of the school district or county or such person as designated by him as responsible for special education once each semester, if requested by the parent or guardian of the child or recommended by the person conducting the special education program. A copy of the results of the review shall be submitted to the person making such request or recommendation for review. (Sec. 14-1014 ARSA)

Similarly California law provides that an annual review must occur of the placement of "educationally handicapped" children:

> The admission committee shall annually (1) review the appropriateness of the placement of minors in special educational programs under the provisions of this chapter and (2) submit recommendations as to the return of such minors to the regular school program, continuance in the program for the educationally handicapped, transfer to other special education programs, or referral to other agencies. (Sec. 6755.1 Cal. Stats.)

Another provision in some states pertains to placing children in special programs for trial periods to determine if such placements are appropriate. The following Colorado statute is an example: "The final approval of the enrollment of any eligible handicapped child in a special educational program shall be made by the board of education of the school district providing such program and such child may be enrolled for a trial period not exceeding nine months." (Sec. 123-23-7 CRS)

Placement Committees and Parents

Since some states realize that evaluation and placement of children in special programs on the basis of single tests or individual professional opinion may not always render a clear-cut decision, they have established placement, child study, or staffing committees. These committees primarily focus on the educable mentally handicapped, learning disabled, and emotionally disturbed. Some states use the committee approach to evaluate and place handicapped children.

A recently enacted law in Alabama includes provision for a typical placement committee:

> Placement Committee means a committee so designated and appointed by the superintendent for determining the eligibility of exceptional children for placement in special school programs or classes, which committee shall be composed of representatives from the fields of medicine, education and psychology whenever practicable. Said committee, after study of all data available on each exceptional child, shall make recommendations concerning each child's admission to a school program or class or withdrawal therefrom. (SB 13 Acts of 1971)

Illinois follows the concept but uses different language:

> The Superintendent of public instruction shall make rules for and shall be responsible for determining the eligibility of children to receive special education. No child shall be eligible for special education facilities except with a carefully completed case study fully reviewed by professional personnel in a staff conference and only upon the recommendation of qualified specialists. In determining the eligibility of children he shall include in the rules definitions of case study, staff conference, and qualified specialist appropriate to each category of handicapped children as defined in this Article. No child shall be eligible for admission to a special class for the educable mentally handicapped or for the trainable mentally handicapped except with psychological evaluation and recommendation by a school psychologist. (Sec. 14-8.01 Ill. Stats.)

The state laws regarding evaluation and placement do not devote extensive attention to the role of parents. Some states require that prior to psychological testing of a child, a parent must grant approval. Perhaps the largest involvement of parents occurs in California where after an evaluation committee decides to place an educationally handicapped child in a special program, they must adhere to the following procedure:

> No minor shall be required to participate in a program for educationally handicapped minors unless the admission by such committees has personally consulted with the parent or guardian of the minor regarding the learning disorders of the minor and the objectives of the program, and the parent or guardian has subsequent to such counseling and prior to participation in a special educational program, filed written consent to such participation with the governing board of the school district or with the office of the county superintendent of schools. (Sec. 6755.3 Cal. Stats.)

Alabama law requires that: "No child shall be given special services under the terms of this act as an exceptional child until he is properly classified as an exceptional child. Provided, however, the child's parent or guardian shall be informed of the reasons for such classification." (SB 13 Acts of 1971)

Another example of parental involvement is the following from Arizona: "The chief administrative official of the school district or county or such person designated by him as responsible for special education shall place the child, except that no child shall be placed or retained in a special education program without the approval of his parent or guardian." (Sec. 14-10103 ARSA)

Colorado law is unique, because while it provides for parent approval for the testing of children who are suspected of having mental handicaps, it also establishes a procedure for parents who disagree with the test results:

> The determination of the mental handicap of a child shall be made by individual examination conducted by a psychologist with the consent of the parent or guardian of the child. In the event that the parents or guardian of the child disagree with the determination of the psychologist or the placement of the child, they may refer the child to a psychologist of their own choice, and at their own expense, and submit such evaluation to the Board of Education. The Board of Education shall have the ultimate right of placement of children attending the public schools within their jurisdiction. (Sec. 123-22-7 CRS)

Recommendations

The concept of equality is often interpreted to imply that government will treat everyone the same. While certainly this should apply to all due process considerations, it becomes more complex when applied to governmentally sponsored human services, since no two individuals are the same.

Two people who come to a hospital with a complaint that their leg hurts may have totally different ailments and require quite different remedies, despite the fact that the presenting problems were the same. For the one patient the remedy may be medication, while for the other, it may be amputation. Certainly amputation, a most severe form of treatment, should only be utilized for persons whose diagnosis requires such treatment and not for all persons having leg problems. Thus in this example, equality means equal access to appropriate service, although the nature of the service may be quite different.

As noted in Chapter 1, there is a growing awareness among educators and the public that students, similar to the above patients, have different problems in learning which require different remedies. Thus as Coleman (1968) has noted, equality can only be determined by the quality of each child's achievements rather than solely the equal distribution of resources.

The greatest difficulty in the achievement of such equality is linking the child with the appropriate educational service. As discussed in Chapter 2, handicapped children have historically been given labels that have medical or psychological meaning, but little relevance to determining the appropriate educational remedy needed.

In recent years much attention has been given to this problem and more effective evaluation procedures have been developed. However, a lag between such knowledge and its implementation still exists as evidenced by the *Diana* case cited earlier. Even when appropriate diagnostic techniques are used by schools, they are often unreliable, either because they were applied by insufficiently trained persons or because insufficient time was allotted to conduct a thorough diagnosis.

Certainly we would be skeptical about having open heart surgery if the sole recommendation was from a medical student after only a 60-minute examination. And yet many children are placed in special education or denied such education on a similar basis.

In order to plan services effectively, school districts need to know the numbers of children having varying learning problems and the geographical distribution of such children. It is imperative that screening procedures be utilized to locate those children and that more intensive evaluation be given in order to determine whether they truly have problems and what educational help is needed.

Such procedures, followed by sufficient numbers of personnel, must be an ongoing part of a school's program. The needs of children change; thus the services they receive must change accordingly. Just as it is folly to keep a patient on antibiotics after the infection has cleared up, so it is folly to keep a handicapped child in a special environment once he can function adequately in a normal environment.

Therefore it is recommended: Public school districts be required by law to maintain an ongoing program of screening and evaluation to locate handicapped children and prescribe appropriate educational services for *such children. State education agencies should determine appropriate evaluation procedures and set standards of competence for persons conducting such programs. School districts should be responsible for obtaining and maintaining such evaluations on all children residents of the district regardless of whether such children are presently in school. To accomplish this task, school districts and the state should be authorized to obtain appropriate records from other public agencies and to contract with other public and private agencies for assistance.*

Every child placed in a special educational program should be thoroughly re-evaluated each year at least.

As a result of the *Diana* and the *Pennsylvania Association for Retarded Children* cases described in Chapter 4, there has been growing concern about possible violations of due process rights in the identification and placement or non-placement of children in educational programs. Any adjustment of a child's educational program is a serious matter. Until recently, schools have operated with total authority in this regard, and no due process was available to the child or his parents. This is similar to a hospital doing surgery without consulting with or obtaining the patient's approval. While the implementation of full due process will be burdensome to the schools, it serves the child's best interests and, most importantly, enhances the rights to which he is entitled.

Therefore it is recommended: Procedures be implemented to assure due process rights of all children and their families in all educational activities that may result in program adjustments, different than those provided normal children or which deny a child access to educational services he or his family feels he needs. Such procedures should include the following:

1. *evaluation on the basis of norms consistent with the culture of the child.*
2. *evaluation conducted in the primary language of the child.*
3. *parental right to obtain an independent evaluation of their child at public expense if necessary.*
4. *a due process hearing in which the parents meet with school officials to determine appropriate placement. In this regard, parents should be entitled to advance notification, access to appropriate school records, representation by legal counsel and provision of additional evidence concerning their child.*
5. *official transcripts of the due process hearing should be maintained, and parents should have the right to appeal decisions resulting from such hearings to the state education agency or directly to the appropriate court.*

Administrative Responsibility

Background

Fundamental to the problems associated with educating the handicapped child is the issue of advocacy. Too often local school officials are heard to say, "This is a state function, and the state should pay most of the costs." And too often the state responds similarly, "We have no authority to intervene in this area. It is a local matter." And so the children wait.

For many years the only specific legislation concerning education of the handicapped, and consequently the only designated administrative responsibility, provided for state institutions or residential schools. Now, all states have some legislation which defines some of the local district responsibilities for handicapped children.

The first mandatory laws establishing education programs for handicapped children were enacted in New Jersey (1911), New York (1917), and Massachusetts (1920). They directed local school districts to determine the numbers of handicapped children in their jurisdictions. In the case of the mentally retarded, local school districts were required to provide special classes when at least 10 children were identified. At the time of this writing one-half of the states retain permissive statutory authority, while the others mandate services.

The issue of mandatory or permissive legislation for education of the handicapped is often thought of as the "shall" or "may" controversy. Because of the many complex considerations it is clear that such a dichotomy is too simplistic. Despite permissive legislation some states have made significant progress because of outstanding state education agency leadership and high levels of state finance. Mandatory law conveys a commitment and priority of the state and can require certain behaviors from school administrative personnel.

If as described in Chapter 1 education is a state responsibility and handicapped children are entitled to an education, then the advocacy for implementation of this entitlement must reside with the state. Unfortunately, the reluctance of most states to assume this position encourages reluctance by the local education agencies to provide all handicapped children with educational opportunities to develop to their fullest potential. It is in such cases, where the state and its school districts and other entities have been recalcitrant in advocating for handicapped children, that the mandatory laws are enacted to force such advocacy.

However, mandation without machinery for enforcement has little value. Generally states which have mandatory legislation do not have a greater percentage of handicapped children receiving an education than those with permissive legislation. Very few mandatory laws contain provisions penalizing education agencies for failure to comply with the mandate. Ackerman and Weintraub (1971), in surveying school districts in six states in 1967, found districts in several states where education officials were unaware of the mandatory provisions of their state school law.

If this is true, then who will advocate education for handicapped children? Some states have legislated the establishment of a division, section, or bureau within the state education agency to administer and stimulate the development of education programs for handicapped children. Although most state education agencies have created divisions without legislation, they are often moved up and down the bureaucratic hierarchies depending on the reorganization plan of the year. A perfect example of this movement is the history of the effort to create an advocate agency within the U.S. Office of Education. By executive order in 1963, President John F. Kennedy established the Division of Handicapped Children and Youth within the U.S. Office of Education. Primary responsibility of the division was to administer the training and research provisions of P.L. 88-164, The Mental Retardation Facilities and Community Mental Health Center Construction Act. Eighteen months later, the division was disbanded.

A reorganization, which closely followed Congressional passage of the Elementary and Secondary Education Act of 1965, found the division's authorities scattered throughout the Office of Education. Visibility in the federal bureaucracy was lost. So was the integrity and cohesiveness of programs. New York Congressman Hugh Carey (1965), Chairman of the House Ad Hoc Subcommittee on the Handicapped, summed up the situation well:

> It would seem that instead of an office in which all of these programs were collected and given exquisite visibility, if I may use that term, that the current situation is that the matters of supervision, administration, dissemination of information, and grouping of programs, and all the various functions in which the special educator would have an interest are now myriad in a number of sections within the Office of Education.

In the past few years, states have accelerated their efforts to adopt the "mandatory" approach to program stimulation. Since 1965 seven states have adopted mandatory legislation for all categories of exceptionality. Twenty-six states have some form of mandatory provision within their state codes.

Six Forms of Mandation

Six basic forms of mandation have been enacted by state legislatures:

1. Full Program Mandation—Those laws require that when children are identified as meeting the criteria to define the exceptionality, programs shall be provided. Rhode Island's law of this type applies to mentally retarded and physically and emotionally handicapped children who are unable to progress through normal education and development:

> In any city or town where there is a child within the age range as designated by the regulations of the State Board of Education, who is either mentally retarded or physically or emotionally handicapped to such an extent that normal educational growth and development is prevented, the school committee of such city or town shall provide such type of special education that will best satisfy the needs of the handicapped child, as recommended and approved by the State Board of Education in accordance with its regulations. (Sec. 16-24-1 R.I. Acts)

2. Planning and Programming Mandation—This form of mandation requires planning prior to required programming. This approach is increasingly being adopted by the states. An Alabama statute serves as the example:

> Each school board shall provide not less than twelve consecutive years of appropriate instruction and special services for exceptional children. . . . (Act 106, Laws of 1971)
>
> Within one hundred twenty days after the completion of said census, each school board in the State of Alabama shall prepare and adopt an incremental five year plan commencing with the school year beginning in September 1972 for the implementation of appropriate instruction and special services for exceptional children residing in its school district, including a reasonable procedure for obtaining certifications of exceptional children by a specialist. (Sec. 4-SB 13 Laws of 1971)

3. Planning Mandation—These laws mandate only a requirement for planning, but can be powerful vehicles to encourage program development, if a review of the plans occurs at the state level.

> The county board of school directors cooperatively with other county boards and with boards of directors of districts of the second, third and fourth class shall prepare and submit to the Department of Public Instruction on or before the 1st day of July 1956, for its approval or disapproval, plans for the proper education and training of all exceptional children in districts of the second, third and fourth class in accordance with the standards and regulations adopted by the State Council of Education. Plans as provided for in this section shall be subject to revision from time to time as conditions warrant subject to the approval of the Department of Public Instruction. (PS Sec. 1372)

4. Conditional Mandation—This law requires that certain conditions must be met in or by the local education district before mandation takes effect. An example is provided in Alaska where, because of a small and widely scattered population, a minimum of five exceptional children have to be in residence in an area served by a local school district or state operated school before programs are required.

> (a) A borough or city school district shall provide for special services for each classification of exceptional children represented by not less than five children residing in the district.
>
> (b) The department shall provide for special services in a school in the state-operated district for each classification of exceptional children represented by not less than five children residing in the district. (Sec. 14.30.186 Alas. Stats.)

5. *Mandation by Petition*—This type of law places the burden of responsibility for program development on the community in terms of parents who may petition school districts to provide programs. In Arkansas the petition process may occur when, in a school district, "5 or more of any one type of handicapped child, or types which may be taught together, . . ." are identified. The law also says:

> In any school district where properly interested persons or agencies or the parents or guardians of five or more of any one type of handicapped children, or of types which may be taught together, petition the Board of Education of that district for a special class, it shall be the duty of the school authorities to request the State Board of Education to cooperate in the establishment of such classes under the rules and regulations established for this purpose by the State Board of Education. (Sec. 80.2105 Ark. Stats.)

6. *Selective Mandation*—In this type of law, not all disabilities are treated equally, such as in Virginia where programs for hearing impaired children are selectively required:

> The State Board of Education shall prepare a program of special education designed to educate hearing impaired children of ages two to twenty who require such a program to attain a scholastic achievement commensurate with their ability. (Sec. 22-9.1 Code of Va.)

The mandatory provisions of some states are more comprehensive than those in other states. The mandation legislation of some states includes provisions for planning, staffing, enforcement, and program finance including funds for instructional materials, transportation, and consultative assistance.

Mandatory legislation that does not contend with the many complex details results in education programs of poor quality. One state, for example, recently enacted a law mandating the establishment of classes for the learning disabled. No consideration, however, was given to providing facilities and materials. The most blatant omission was the lack of any provision for staffing the program.

Since the state bears the constitutional and legal responsibility for providing education, it seems logical to assume that responsibility for the education of the handicapped in state institutions is a perfunctory matter. Such is not the case. The majority of children residing in state institutions for the mentally retarded and emotionally disturbed do not receive educational services. Many of these children are severely impaired and would profit immensely from instruction in self-help skills such as dressing, feeding, and bathing. It is interesting to note that the Attorney General of Minnesota recently ruled that self-help education is as much a part of elementary and secondary education as any other part of the curriculum.

A 1971 survey of state educational practices in institutions for the mentally retarded, conducted by the State-Federal Information Clearinghouse for Exceptional Children, indicates that few state departments of education discharge any responsibilities for the state institutions for the mentally retarded—with the exception of administration of federal programs. In the state of Washington, however, the Office of Public Instruction bears the administrative responsibility for the education of children age 6 to 18 who are in state institutions for the mentally retarded and in correctional institutions.

Litigation pending in the United States District Court for the Eastern District of Pennsylvania will undoubtedly clarify some state administrative responsibilities for providing education programs for handicapped children in institutions. In the case, *Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania* (Civil Action No. 71-42), the plaintiff, on behalf of 13 severely mentally retarded children, contends that denial of educational services deprives these children of the equal protection of the laws guaranteed by the Fourteenth Amendment of the U.S. Constitution. The children, who reside in the state's institutions for the retarded, currently receive no educational services. It is significant to note that many of these children were also denied educational services by local school districts prior to institutionalization. The plaintiff has introduced evidence indicating the authority for organizing and supervising classes in state institutions is under the jurisdiction of the Pennsylvania Department of Public Instruction.

> Schools and Classes in Institutions—It shall be within the jurisdiction of the Department of Public Instruction to organize and to supervise schools and classes according to the regulations and standards established for the conduct of schools and classes of the public school system in the Commonwealth in all institutions wholly or partly supported by the Commonwealth which are not supervised by public school authorities. (PS Sec. 1926)

Status

In each state, a state agency is charged with the responsibility for administration of programs for handicapped children. Ackerman and Weintraub (1971) discerned three basic approaches to the delegation of responsibility.

The most common approach is to charge responsibility to the chief legal educational agent of the state, usually the state board of education, or in some cases the chief state school officer. The responsibilities delegated to that authority may be general or specific. Nevada, for example, has general responsibilities:

> The State Department of Education shall prescribe minimum standards for the special education of physically and mentally handicapped minors, and so apportionment of state funds shall be made by the superintendent of public instruction to any school district on account of the instruction of physically or mentally handicapped minors until the program of instruction mentioned therein for such handicapped minors is approved by the state department of education as meeting the prescribed minimum standards. (NRS Sec. 388.520)

The state of Connecticut has charged its state board of education much more specifically:

> a) State board of education shall provide for the development and supervision of the educational program and services for children requiring special education and may regulate curriculum conditions and instruction, physical facilities and equipment, class composition and size, admission of students, and the requirements respecting necessary special services and instruction to be provided by town and regional boards of education. Said board shall supervise the education aspects of the training of all children requiring special education who are residing in or attending any child caring institution receiving money from the state. b) The secretary shall designate by regulation, subject to the approval of the state board of regulation, the procedures which shall be used to identify exceptional children. c) Said board shall be the agency for cooperation and consultation with federal agencies, other state agencies, and private bodies on matters of public school education of children requiring special education; provided, the full responsibilities for other aspects of the care of such children shall be reserved to such other agencies. (Sec. 10-766 Conn. Stats.)

The second approach, used in several states to delegate authority for special education, is to create an agency to administer the program. Indiana law, for example, provides,

> There is hereby created under the Indiana State Board of Education, a Division of Special Education which shall exercise all the power and duties set out in this act. The governor shall appoint, on the recommendation of the state superintendent of public instruction, a director of special education who shall serve at the pleasure of the governor. The amount of compensation of the director shall be fixed by the governor. The duties of the director shall be as follows: 1) general supervision of all classes and schools for handicapped children in coordinating the work of these schools; 2) to make, with the approval of the state board of education, rules and regulations governing the curriculum and instruction, including

> licensing of personnel in the field of education, as provided by law; 3) to inspect and rate all schools or classes of handicapped children in order to maintain proper standards of personnel, buildings, equipment, and supplies. . . . (Sec. 28-3522 Ind. Code)

A third approach, multiple agency authority, is not common. Massachusetts uses this approach in delegating responsibility to several state agencies:

> The school committee of every town and regional school district shall ascertain, under regulations prescribed jointly by the department of education and the department of mental health, the number of children of school age resident who are emotionally disturbed. (Sec. 71-46h Mass. Gen. Laws)

All state constitutions designate education as a state responsibility. However, with the exception of Hawaii, state laws delegate specified authority to local education agencies. Hence, the local education agency, as a recipient of delegated authority, is pivotal in determining the nature of educational programs for the handicapped. Graham (1962) discusses the critical issue of local responsibility:

> I am amazed to note that when the local community opinion becomes strong enough, or the parents apply the pressures of their organized group, the ways and means are found. The community of the concerned generally find ways of setting the objectives of education and the policies of a board of education. Where understanding of the children, their problems, and the advantages to both the children and society are clearly set forth we find progress. Where the community accepts these children and its responsibility to them we find results.

Recommendations

In the ideal state where the right to an education is truly believed and enforced, there would be little or no need to discuss mandatory legislation. Such legislation simply reiterates what exists in most state constitutions. But, when many persons have been denied their rights, it is often necessary to spell out those rights. Berger (1967) has described law as the means the minority uses to assure appropriate conduct from the majority, when such conduct is not naturally forthcoming.

Thus, mandatory legislation has been the tool that advocates of handicapped children have pushed through state legislatures to secure these children's constitutional rights. However, the advocates have found in many cases that the mandates were little more than philosophy and that most state education agencies were either powerless or unwilling to enforce them. The advocates have now turned to the courts to seek relief—and slowly but surely are winning the right to an education for handicapped children. But the court edict can do only so much, and handicapped children will not get the education they need if it is given through the lash of the court.

Therefore it is recommended: Statements expressing the mandate of the state that the public schools provide for free education of handicapped children be incorporated into state law and appropriate state administrative literature. Mechanisms must be included in the law to grant the state education agency enforcement powers sufficient to obtain compliance. Sufficient time should be allowed to enable administering agencies to obtain and allocate the necessary resources, but any such delays should not be construed as a diminution of the children's rights. Provision should also be made to permit administrative and judicial review of complaints lodged against any responsible state or local agency failing to comply with the mandate.

It is further recommended that there be created in the state education agency a Division (or similar title) for Education of the Handicapped which should be the state agent responsible for the development, supervision and regulation of programs to educate handicapped children throughout the state. The Division should be responsible directly to the head of the state education agency. The Division should be responsible for conducting and maintaining the state plan. In addition, its operating budget and total special education budget should have visibility in the state education agency, so that it can be given proper consideration by governors, legislators and the general public.

Planning

Background

Education of handicapped children requires coordination of many professions and the careful allocation of many resources. It takes careful planning to assure that personnel, equipment, facilities, and other elements of a good program are there when handicapped children need them.

As educational programs for the handicapped have expanded, the need for statewide planning and coordination has grown proportionately. The overriding concern became how can the limited resources of state and local government and private agencies be deployed to most effectively meet the needs of the children. In 1960 at the White House Conference on Children and Youth, John Gardner, later to become Secretary of Health, Education and Welfare, said that "Each state should establish a permanent structure to coordinate all public and private services for the mentally handicapped, to review legislation and to carry out overall long-range planning in relation to other services. . . ." (Rothstein, 1964)

National leadership for coordination and planning in mental retardation was obtained with the 1963 passage in the Congress of P.L. 88-156, the Maternal and Child Health and Mental Retardation Planning Amendments. In that same year, the Congress made available funds for comprehensive state mental health planning.

To implement these laws governors set up state councils and committees to engage in fact finding, planning, and development of recommendations. It is estimated that over 40,000 persons participated in mental health planning alone.

Title VI of the Elementary and Secondary Education Act of 1966 provided direct grants-in-aid to the states to assist the development of programs to educate handicapped children. However, the law also required that state plans be developed to show the state's needs, a procedure for meeting the needs, and the role of federal funds.

While federal planning funds have provided great impetus to states in recent years, state legislation requiring state planning for education of the handicapped can be traced to the late 1940's. A Pennsylvania law required that county boards of school directors, together with other county boards and with boards of directors of districts, shall prepare and submit to the department of public instruction for approval, "plans for the proper education and training of all exceptional children. . . ." (PS Sec. 1372)

A significant step toward effective planning was taken by Illinois in 1965 when a law was passed making education for handicapped children mandatory. While this was not the first mandatory law, the Illinois law was the first to relate implementation to planning. The law:

> required that from 1965 until 1967 all counties in the state develop plans for special education in conjunction with local advisory committees and that in July 1967 all counties submit plans to the state advisory council on special education, which, jointly with the state Department of Public Instruction would approve the plans. The school districts then had until 1969 to prepare to meet the requirements of the mandate. (Weintraub, 1971)

While only about 20 percent of the states have planning provisions within their laws, all states have done some planning for education of handicapped children either through state or federal funds.

It is difficult, however, to assess the impact of past planning efforts on actual program development and coordination. In many cases, planning efforts have helped convey the needs of the handicapped to governmental policy makers and the public and as such have fostered more positive public attitudes and governmental action. Ackerman and Weintraub (1971) note that planning laws, such as the above Illinois statute, forced local school authorities to face more squarely the needs of handicapped children in their communities. They also note state technical planning assistance, which demonstrated practical approaches to meeting these needs, reversed many negative attitudes of the local school authorities. Several states, notably Texas, have hired private firms to assess state program needs and to develop a plan. In developing the Texas plan, hearings were conducted around the state and numerous outside consultants called in. An operational plan was prepared and supporting legislation introduced. The plan's implementation procedure was developmentally as well as fiscally and operationally feasible. The plan was endorsed by the state education agency, the governor, and the legislature and is now being implemented.

However, to paraphrase Robert Burns, the best laid plans of mice and men often are lost because they are politically unrealistic. Many state plans have done little more than occupy space on a bookshelf, because they called for resources or changes that were beyond the ability of the state to produce. Another weakness is that many plans are often presented in generalities, necessitating additional planning for implementation.

To facilitate planning and/or coordination as well as to provide advice to administering agencies, many states have created advisory committees on the education of handicapped children. These committees vary in their responsibilities and their policy making authority. Their membership often includes legislators, parents, professionals and representatives of government agencies. About 25 percent of the states have legally established advisory committees.

Status

The main variance among state planning statutes is their degree of specificity and the degree to which the varied agencies are bound by provisions.

The most general form of planning requirement is in Pennsylvania law and simply requires that local education agencies submit plans to the state education agency.

The following Idaho law is similar but more specific:

> The board of trustees of each district in the state shall each year on or before the tenth day of July report to the state board of education the number of exceptional children as defined in Section 33-2002, Idaho Code, and as further defined and described by the state board of education, residing within the district who are entitled to school privileges as exceptional children and shall compute the average district per pupil cost of providing special education for such children along with the projected plans and anticipated cost of providing special education during the following year and shall certify such to the state board of education. The trustees shall periodically, as requested by the state board of education, submit projected long range plans and a progress report of special education as provided within the district or jointly with another school district. (Sec. 33-2009 Idaho Code)

Perhaps the strongest state planning law was passed by the 1971 Alabama legislature. The law requires local school boards to establish five year incremental plans to serve handicapped children. The plans may be rejected if the minimum standards, developed by the state board, are not met. In that case, provision exists for joint development of a plan or if that fails, the imposition of a binding plan by the state board. Once a plan is developed by or for the district:

> The State Board of Education shall have the primary responsibility for enforcing compliance with such plans and with compliance of school boards with its regulations and the requirements of the act. If any local board fails or refuses to implement the plan provided for under this Act, the Attorney General shall upon request of the State Board of Education, or upon the request of any private citizen, bring civil injunctive suits to enforce the implementation of such plan. If the State Board fails or refuses to carry out any duties required of it by this Act, the Attorney General shall upon the request of any private citizen, bring civil suits in Montgomery County to require that such duties be performed. (SB 13 Laws of 1971)

A unique feature of this law is that in addition to providing for short term planning, it also requires long range planning to occur during the fifth year of the incremental planning.

> During the fifth year of implementation of the incremental five-year plan referred to above, each school board shall submit a long-range plan for providing appropriate instruction and special services for exceptional chil-

> dren and shall submit said long-range plan to the State Board of Education for its review and approval or disapproval. Such plan, unless thereafter modified with approval of the State Board of Education, shall be adhered to by the school board. Said long-range plans (and all modifications thereof) shall be resubmitted to the State Board of Education for its review and approval or disapproval at such intervals as may be established by the said State Board in regulations but not in any event less often than once every seven years or more often than once every two years. Provided, however, that disapproval of a plan or any amendments thereto shall be only because of failure of the plan to meet minimum standards set out in regulations of the State Board adopted in accordance with Section 5 of this Act, and any such disapproval must specify in detail the reasons for such disapproval. The procedure for approving, disapproving, establishing and enforcing such long-range plans shall be the same as that set forth hereinabove for the incremental five-year plans and the long-range plans shall include such provisions as may be appropriate for the following: (1) Establishment of special education classes, instruction, curricula, facilities, equipment and special services; (2) Utilization of teachers and other personnel; (3) Attendance requirements for exceptional children; (4) Services for exceptional children whose condition will not permit them to profit or benefit from any kind of school programs and other services and facilities; and (5) Payment of tuition and other costs for attendance at appropriate semi-public or private schools or institutions which may be able to provide appropriate services for all or some exceptional children in comparison with that which can be provided through the school system, such as, for example: Children's Center of Montgomery; and Opportunity Center School in Birmingham. . . . (SB 13 Laws of 1971)

Advisory Groups

Some states have used advisory committees to develop or assist in the development of state plans. The Illinois law cited earlier in this chapter utilizes such an approach. Kentucky's law is similar but grants a state task force of the Human Resources Coordinating Council considerably more authority.

The Kentucky task force is composed of 11 members appointed by the governor, no more than five of whom may be professionally involved in the education of exceptional children. Nonprofit organizations with statewide memberships and whose purposes include fostering or providing programs for the handicapped, submit recommendations to the council. Representatives from each department on the Human Resources Coordinating Commission and the medical director of the Commission for Handicapped Children serve as advisors to the task force.

The powers and duties of the task force include:

> (a) Surveying needs, and the resources available for special education, training, and related services for exceptional children;

> (b) recommending regulations to the Department of Education and other departments dealing with exceptional children;
> (c) employing independent professional organizations and staff for services not readily available;
> (d) fixing the terms of service of members of regional task forces;
> (e) receiving and evaluating reports of regional task forces, and making recommendations to and receiving recommendations from regional task forces and regional councils;
> (f) assuming the powers and responsibilities of any regional task force which, in the judgment of the State Task Force, cannot or will not fulfill its functions, powers, or responsibilities;
> (g) serving in an advisory capacity to the Department of Education, to the Legislative Research Commission, and to the Human Resources Coordinating Commission and Council;
> (h) making recommendations to the Council, to school boards, to governmental agencies, to the Legislative Research Commission, and to the legislature with respect to special education programs and related services for exceptional children. Such recommendations may relate to, without limitation to, the recruitment and training of, and assistance to, teachers in special education facilities, the transportation of special education students, and the establishment of special education facilities within the time limitations imposed by the act. (Ch. 47 HB Laws of 1970)

Regional task forces, appointed by regional human resources councils, are established to assist the state task force in ascertaining needs, evaluating resources, and recommending plans for state-wide programs for exceptional children. Each regional task force submits plans for implementation of special education programs and coordinated services through the Regional Human Resources Council to the state task force. If a regional task force fails to submit its implementation plans, the state task force prepares and submits a plan to the regional human resources council and the state council. The task force submits its final reports and recommendations to the Human Resources Coordinating Commission which in turn submits the report to the governor, state board of education, and the legislative research commission.

Indiana's advisory council's planning function is limited to providing advice to the state education agency:

> The superintendent of public instruction shall appoint by September 1, 1969, a state advisory council whose duties shall consist of assisting the department of public instruction in the development of a state-wide plan to provide a free public school education meeting the special needs of handicapped children. There shall be appointed seven (7) members who shall serve for a period four (4) years, except that the initial appointments shall be made for periods of one (1) to four (4) years. At the expiration of these initial appointments, subsequent appointments shall be made for four (4) year terms. Vacancies shall be filled in like manner for the unexpired balance of the term. Because of the responsibility of the state

> board of health and the department of mental health for residential special education programs, the commissioner of health or his designate and the commissioner of the department of mental health, or his designate, shall be members of the council, ex-officio.
>
> The members appointed shall be citizens of the United States and of this state and shall be selected on the basis of their knowledge of or experience in problems of the education of handicapped children.
>
> The responsibilities of the state advisory council shall be to advise the superintendent of public instruction and the commission on general education regarding all rules and regulations pertaining to handicapped children, to recommend approval or rejection of completed comprehensive plans submitted by school corporations acting individually or in a joint school services program basis with other corporations and to devise and recommend to the superintendent of public instruction and the commission on general education a comprehensive plan which meets the special needs of handicapped children in the event a school corporation does not complete its plans by July 1, 1971. Any comprehensive plan developed by the state advisory council shall be disseminated to all school corporations affected by such plan and shall be advisory.
>
> The council shall organize with a chairman upon ten (10) days written notice but not less than four (4) times a year. The council shall consider any comprehensive plan proposed by school corporations within sixty (60) days after its receipt by the chairman. Members of the council shall be entitled to reasonable amounts of expenses necessarily incurred in the performance of their duties.
>
> The superintendent of public instruction shall designate the director of special education to act as executive secretary of the council and shall furnish all professional and clerical assistance necessary for the performance of its powers and duties. (Ch. 396 Acts of 1969)

Another section of this law specifies that initial responsibility for planning lies with local agencies, involving the advisory council only in an approval role regarding local planning:

> Each school corporation shall by July 1, 1971, complete and report to the state superintendent of public instruction a comprehensive plan, whereby all handicapped children residents in the school corporation district may be provided a free public school education which meets their special needs. School corporations may cooperatively complete and report by July 1, 1971, a joint school services program plan whereby all handicapped children in the cooperating school corporations may receive a free public school education which meets their special needs if such an approach seems desirable due to population sparsity, geographic factors, or other substantial reasons.
>
> The programs operated by the Indiana state board of health and Indiana department of mental health shall be given full consideration and may be utilized where appropriate. The superintendent of public instruction shall furnish professional consultant assistance to local school corporations. (Ch. 396 Acts of 1969)

Many states have advisory committees with no planning responsibilities, while some states have committees with no specific responsibilities at all. The authority of most such committees is largely limited to coordination and advice.

A Coordinating Council on Programs for Handicapped Children in California has no specific functions assigned. The law merely specifies that the council is composed of the director of education, the director of mental hygiene, the director of public health, the director of rehabilitation, the director of social welfare, and the director of the youth authority. Another example where specific tasks are not spelled out in the law is Delaware. Here the governor is authorized to appoint a committee on the needs of exceptional children. This committee serves in an advisory capacity to both the state board of education and the board of trustees of the Delaware State Hospital.

Montana limits its committee's function to advice:

> The state superintendent of public instruction may appoint a volunteer board of various exceptional child specialists to whom the supervisor shall from time to time, as directed by the state superintendent of public instruction, give a report and from whom he may receive counsel. (75-1405)

New Jersey is more specific in charging the committee to advise on rules and regulations, the implementation of legislation and standards and qualifications for professional personnel:

> The Commissioner of Education shall appoint *biannually* an advisory council with the approval of the State Board of Education which will consist of not less than 7 *nor more than 15* members representative of professional and lay interests. The advisory council shall advise in the promulgation of rules, regulations and the implementation of this act and the establishment of standards and qualifications for the professional personnel. The council shall serve without remuneration. (Sec. 19 Laws of 1966)

The membership on advisory committees varies from state to state as evidenced by several of the preceding examples. Another example is Virginia which includes legislators on the Overall Advisory Council on Needs of Handicapped Children. The council includes among its 14 members a state senator appointed by the president of the Senate and two members from the House of Delegates appointed by the speaker of the house.

North Dakota provides that the state board of public school education shall be the advisory council on special education. (NDS Sec. 15-29-02)

Recommendations

In this era of rapidly expanding demands on the public schools for educational services to handicapped children as well as increasing demands from the legislatures and the public for greater education accountability, the importance of effective program planning takes on new magnitude. There has emerged over the past few years a science of planning. Acronyms and terms like Program Planning and Budgeting System (PPBS) and Program Evaluation and Review Technique (PERT) are now common education jargon. Even so effective state and local planning has been minimal. Many of the most well intentioned planning efforts have failed, because little attention was given to specificity and realistic appraisals of resources and politics. A plan must be more than a document; it must be a strategy for achieving clearly stated goals and objectives. Federal funds and technical assistance has greatly enhanced the competencies of state education agencies to plan for handicapped children. But significantly greater state effort is needed. Such efforts must also include planning by local education agencies which can then be orchestrated as part of a total state plan.

It is therefore recommended: State law provide for a planning mechanism to detail how all state and local education agencies and state institutions intend to educate all handicapped children. Such plans should be regulated and coordinated by the state education agency, which should have authority to approve or disapprove local or institutional plans and prepare for such entities if they do not comply. Once approved, the plans should be binding and only amended through application to the state education agency.

State government is often top heavy with advisory committees, councils and commissions, many of which are inactive. Thus states are usually hesitant to add another such group to the list.

Yet it is evident from Chapter 1 that handicapped children have been discriminated against in their efforts to obtain an education. To correct this situation will require significant additional resources and changes in the behavior of many educators. For these reasons, it is imperative that there be an advisory council for education of the handicapped to serve as an advocate for these children and to make public their needs and the progress of the state toward meeting these needs.

It is therefore recommended: State law provide for the establishment and support of an advisory council for the education of handicapped children. The membership of the council should not include any employee of a state agency having responsibility for the handicapped. Members should be appointed by the head of the state education agency or the governor and should serve specific terms. The council should have authority to:

- *review and comment on the state plan*
- *comment on relevant proposed rules and regulations,*
- *provide advice, and*
- *report annually to the state board of education, governor, legislature, and the public their recommendations and on progress made by the state in educating handicapped children.*

Finance

Background

Compared to the average cost of educating a normal child, education of the handicapped is expensive. A recent study (Rossmiller et al., 1970) of 24 school districts in five states indicates the cost of special programs for handicapped children ranges from 1.18 times the cost of educating a normal child for educating a speech handicapped child to 3.64 for educating a physically handicapped child. The higher costs are due primarily to lower teacher-pupil ratios, auxiliary personnel, and transportation. The study also notes that most classes for the handicapped with low teacher-pupil ratio were housed in rooms designed for over 30 students, thus inflating unrealistically the per pupil costs for facilities, operations, and maintenance.

There is evidence to suggest that demographic factors may also influence the costs of special programs for handicapped children. For example, rural areas having few deaf children may find the per pupil costs of special equipment and facilities exorbitant.

The cost may not seem as large to an urban district which can distribute the costs over a larger population. Transportation costs for handicapped children in urban areas, when transportation is not provided to regular students, will also expand per pupil costs. The 1969 report of the Conference of Large City Boards of Education in New York State found that, on the basis of urban financial data, mentally retarded and physically handicapped children cost three times as much to educate as normal children, while severely mentally retarded and emotionally disturbed children cost five times as much.

The U.S. Office of Education (SFICEC, 1970) estimates that during the 1968-69 school year state and local governments spent $1,363,410,000 on education of exceptional children. This represents 33 percent of the funds required for full service. Rossmiller et al. (1970), using their cost indices, project a minimum 1980 expenditure of about $7 billion to provide education to all handicapped children from ages five to 17.

The Analytic Study of State Legislation for Handicapped Children (Ackerman and Weintraub, 1971) found that special programs for handicapped children tend to become a "fiscal football" in times of local educational austerity. These programs, according to the study, are often perceived by general school administrators as "frills," resulting in their demise or curtailment at the first attack on the local school budget. In addition, the study rated a strong positive relationship between the degree of program development and the level of state support.

Ackerman and Weintraub point out that the characteristics of the programs developed also reflect the type of state support provisions. State funding on the basis of a teacher unit allocation for a determined number of pupils tends to stimulate heavy domination of special classes. State support for facility rental but no capital outlay funds usually results in handicapped children receiving their education in inadequate facilities.

The study also found that in states where funding is allocated on a fixed per pupil or unit basis, only a portion of the money was absorbed or diverted into the general school or community coffers.

Butterfield (1969) pointed out that while less than five percent of the mentally retarded reside in institutions, more money is spent to maintain them than is spent on public education for the retarded. He estimates that over $500 million was spent for institutional costs for the retarded in 1966. While this figure appears high, it reflects a 1966 national average of $6.72 per day per patient for care and treatment compared to a $40 per day per patient cost in a general hospital and provides little more than custodial care for over 200,000 retarded persons—half of whom are children—residing in state institutions.

Rossmiller et al. (1970) demonstrate the high costs of residential programs for the emotionally disturbed, deaf, and blind in comparison to the costs of public day school programs. The median costs per pupil in public day school programs for these children were as follows: emotionally disturbed $1,563; deaf $2,419, and blind $2,197. The costs per pupil in residential schools were as follows: emotionally disturbed $5,809; deaf $4,195, and blind $6,924.

While the cost data often vary from study to study, it is obvious that day school programs are significantly less costly than residential programs. This differential becomes more exaggerated when projected over time. Congressman Hugh L. Carey noted (Proceedings and Debates, 1968) that given a minimum figure for the care of an institutionalized child of $7 a day or about $2,500 a year, the total cost of maintaining a handicapped person for 60 years would be $150,000. If that same person were given an education ($16,000) and was therefore employable, over a 40 year period there would be a positive contribution of $60,000 rather than a cost of $150,000.

As stated in the opening of this chapter, appropriate educational services for handicapped children are more expensive than services for normal children. However, the goal of education for many handicapped children is movement toward more normalized instruction: the faster that movement the less expensive education becomes. While there is little cost benefit data available in this regard, particularly in the area of early childhood education, the economic logic of maximal investment to reduce the impact of handicaps on learning appears to be quite sound.

Status

All states have some legal provisions for reimbursement to local school districts for services to handicapped children beyond the general school reimbursement. In some cases this might mean that a school district will receive from the state one teacher unit for 10 children instead of 27 children or, on the other hand, it may mean a direct appropriation of $600 for every exceptional child in the class. We might group the reimbursement formulas into three categories: unit reimbursement, per pupil reimbursement, and special reimbursement.

Unit Reimbursement

An example of a pure unit support program is the state of Louisiana which provides one unit (which in this case is the minimum foundation support level for a teacher) for each class of special education students:

> Each parish and city school board is hereby authorized to include in its cost program the salaries, according to the Official Louisiana Teachers Salary Schedule, of each special education teacher and therapist who is qualified according to the requirements of the State Board of Education and who is engaged in the teaching or training of any one type of handicapped or other exceptional children who are eligible to receive such education or training according to the rules and regulations of the State Board of Education.
> The allotment of teachers as hereinabove stated is in addition to the allotment of teachers in the regular classroom and is based on the following minimum-maximum pupils per teacher or therapist:
>
> (1) Slow learners—one teacher per 12-18 pupils
> (2) Educable mentally retarded—one teacher per 10-15 pupils
> (3) Trainable mentally retarded—one teacher per 8-12 pupils
> (4) Deaf or hard of hearing—one teacher per 8-10 pupils
> (5) Blind or partially sighted—one teacher per 8-10 pupils
> (6) Speech impaired—one therapist per 100 pupils
> (7) Cerebral palsied—one teacher per 8-10 pupils
> (8) Emotionally disturbed—one teacher per 8-10 pupils
> (9) Others—as determined by regulations of the State Board of Education
>
> When there are fewer than the minimum number of pupils per teacher as specified above, but not fewer than five (5) pupils per teacher, then the state allotment for the approved teacher shall be reduced one-tenth for each pupil less than the specified minimum. The amount of the reduced state allotment shall be paid the teacher from local school board funds. (LRS Sec. 1946)

Florida's special education laws are somewhat similar to those of Louisiana. Also operating on a unit basis, Florida allows one unit to be granted for every 10 exceptional children in special classes, one unit for every 10 preschool children, as well as varying units to meet transportation costs:

> (b) For each group of ten (10) or more exceptional children to be taught by a properly qualified full-time teacher as a special class, or taught individually as homebound or hospitalized children unable to attend school for the major portion of a year, one instruction unit shall be allowed. The minimum number of pupils required for such unit may be reduced to not less than five (5), as authorized by regulations of the state board, for special situations where the instruction of a larger number would not be feasible or practicable. Up to one fifth (1/5) of a unit may be authorized for each exceptional child who resides in communities where fewer than five (5) exceptional children are in need of special instruction as determined by the school board in accordance with the provisions of law.
>
> (c) For each properly qualified member of the instructional staff devoting full time to the instruction or improvement of exceptional children from regular classes as prescribed by regulations of the state board, one instruction unit shall be allowed. (Sec. 236.04 Fla. Stats.)

Unit systems such as those described above are most common in states operating under minimum foundation programs. Unit formulas place great fiscal authority in the hands of state boards of education and state legislatures, since the units must be appropriated in order to have any level of state financial assistance.

A second type of unit formula might be called the percentage reimbursement. A good example of this type of law is Wisconsin's where the state assumes 70 percent of some of the varied costs of special education:

> State Aid. (1) If, upon receipt of the report under s. 115.80(3), the state superintendent is satisfied that the special school, class, center, or other service has been maintained during the preceding year in accordance with law, he shall certify to the department of administration in favor of each county, co-operative educational service agency and school district maintaining such schools, classes, centers and other services a sum equal to 70% of the amount expended by the county, agency and school district during the preceding year for salaries of qualified personnel enumerated in s.115.80(1), transportation and board and lodging of children residing within the county, agency or school district, special books and equipment used in programs under this subchapter and other expenses approved by the state superintendent. The department of administration shall pay such amounts to the county, agency and school district from the appropriation under s.20.650 (3) (d). (Sec. 115.85 WSA)

The percentages reimbursed vary greatly from state to state. Some states also include a provision to allow proration if the legislature does not appropriate sufficient funds to meet approved requests for reimbursement. Such a provision is contained in the following South Dakota statute:

> Section 5. The costs of the special program shall be determined and covered as follows:
>
> (1) The cost of special education incurred by a school district shall be determined by dividing the total salaries of special education personnel by 80 percent;
>
> (2) The cost of special education as determined in section 5 (1) of this Act shall be paid by the Superintendent to districts in an amount that may be provided as state aid by the Legislature from funds available to the Department at a ratio as determined by dividing the total state cost by the Legislative appropriation;
>
> (3) The cost of special education which exceeds that which is provided as state aid by the Legislature shall be the responsibility of the school district wherein the exceptional child has school residence through its source of revenue provided in section 6 of this Act; (Chap. 58 Sec. 5 Session Laws of 1969)

A third type of unit formula is the straight sum reimbursement. Illinois is an example of such a formula. The state reimburses specific sums to each school district for teachers, special education directors, school psychologists, and other professional personnel.

> . . . (a) For eligible physically handicapped children in hospital or home instruction ½ of the teacher's salary but not more than $700 annually per child or $3,500 per teacher, whichever is less. Children to be included in any reimbursement under this paragraph must regularly receive a minimum of 1 hour of instruction each school day, or in lieu thereof a minimum of 5 hours of instruction in each school week, ...
>
> (c) For each professional worker excluding those included in subparagraphs (a), (d), (e), and (f) of this section the annual sum of $3,500.
>
> (d) For one full-time qualified director of the special education program of each school district which maintains a fully approved program of special education the annual sum of $5,000. Districts participating in a joint agreement special education program shall not receive such reimbursement if reimbursement is made for a director of the joint agreement program.
>
> The Superintendent of Public Instruction shall set standards and prescribe rules for determining the allocation of reimbursement under this section on less than a full-time basis and for less than a school year.
>
> (e) For each school psychologist as defined in Section 14-1.09 the annual sum of $5,000. . . . (Sec. 14-13.01 Ill. Stats.)

Per Pupil Reimbursement

The second general category is the per pupil reimbursement. Under this system there are three basic patterns with variations.

First, there is the system which might be labeled the "straight sum reimbursement," as typified by the state of Arizona, which provides in addition to the general state per pupil reimbursement, specific reimbursements for children on the basis of their disability.

A. All students as defined by #15-1011 shall be included in the appropriation and apportionment made pursuant to ##15-1211 and 15-1212 and the county levy as provided in #15-1235. In addition:

1. The legislature shall appropriate the following amounts per unit of average daily attendance per annum for each special education student taught, the appropriation being made on an actual per capita per annum basis as shown by the records of the superintendent of public instruction:
(a) Three hundred eighty dollars per unit of average daily attendance of educable mentally handicapped pupils.
(b) Three hundred eighty dollars per unit of average daily attendance of emotionally handicapped pupils.
(c) Five hundred twenty-six dollars per unit of average daily attendance of homebound pupils.
(d) Five hundred ninety dollars per unit of average daily attendance of multiply handicapped pupils.
(e) Three hundred eighty dollars per unit of average daily attendance of physically handicapped pupils.
(f) Six hundred ninety dollars per unit of average daily attendance of trainable mentally handicapped pupils.
(g) Fifty dollars per unit of average daily attendance of gifted pupils.

2. The county shall provide the following amounts per unit of average daily attendance for each special education student taught by the district:
(a) Ten dollars per unit of average daily attendance of educable mentally handicapped pupils.
(b) Ten dollars per unit of average daily attendance of emotionally handicapped pupils.
(c) Ten dollars per unit of average daily attendance of homebound pupils.
(d) Ten dollars per unit of average daily attendance of multiple handicapped pupils.
(e) Ten dollars per unit of average daily atendance of physically handicapped pupils.
(f) Ten dollars per unit of average daily attendance of trainable mentally handicapped pupils.

3. The legislature shall appropriate fifty dollars for each speech handicapped pupil, except that such monies shall not be paid on behalf of more than ninety pupils for each certified speech therapist employed by the school district or county.

B. The appropriations and apportionment shall be computed with reference to the estimated number of special education students to be taught during the current year in classes and programs having a minimum of two hundred forty minutes of instruction or work experience as provided for in #15-1015, subsection A per school day, except that a child receiving instruction under the homebound teaching program shall be deemed in full attendance when he attends classes or receives instruction for a period

> of not less than four hours per week. Any additional cost resulting from the special education program and not provided for under the provisions of this section shall be met by each school district having students receiving special instruction or by the county in the case of a county special education program. (Sec. 15-1017 ARSA)

A second type of per pupil reimbursement is the excess cost formula. Under this system, the district first determines a per pupil cost of instruction, then subtracts from this amount the cost of educating a non-exceptional child in the same district. North Carolina exemplifies the excess cost approach:

> Reimbursement of school districts having special education for handicapped persons. Any school district which has maintained a previously approved program of Special Education for handicapped individuals during any school year shall be entitled to and receive reimbursement from the state as determined by the State Board of Education for the excess cost of instruction of the individuals in said program of Special Education above, the cost of instruction of pupils in the regular curriculum of the district which shall be determined in the following manner:
>
> Each board shall keep an accurate, detailed, and separate account of all monies paid out by it for the maintenance of each of the types of classes and schools for the instruction and care of pupils attending them and for the cost of their transportation, and should annually report thereon, indicating the excess cost for each elementary or high school pupils for the school year ending in June, over the last ascertained average cost for the instruction of normal children in the elementary public schools or public high schools as the case might be, of the school district for a like period of time of attendance as such excess is determined and computed by the board and make claim for the excess as follows: . . . (NCGS Sec. 115-31.17)

The third type of per pupil reimbursement is the weighted formula. An example of this is Idaho's law which uses a multiplier in determining the reimbursement for handicapped children.

> Foundation Program.
> 4b. Handicapped Child Factor.—A handicapped child factor shall be calculated for the state and also shall be calculated for each school district to provide for the education of handicapped pupils as set forth in sections 33-2001—33-2004. To obtain said factor, multiply 300 per cent by the average daily attendance of handicapped children for either the state or school district as the case may be. (Sec. 33-1002 Idaho Code)

Special Reimbursement

The third general category of state reimbursement is the special reimbursement. Such procedures are directed at specific supplemental aspects of the special education program such as instructional materials and media, transportation, facilities, research, and personnel training.

Texas provides the following "special service allowance" to each school district:

> (a-4) To each school district operating an approved special education program there shall also be allotted a special service allowance in an amount to be determined by the State Commissioner of Education for pupil evaluation, special seats, books, instructional media and other supplies required for quality instruction. (VACS Art. 2922.13)

North Dakota also provides a special allotment for transportation, equipment and residential care:

> Upon the determination by the director of special education that the school district has made expenditures for each exceptional child in such program equal to the average expenditures made in such districts for elementary or high school students, as the case may be, and the parents of the child receiving special education under such programs, or the legally responsible person, have made adequate efforts to provide needed education or that adequate reasons otherwise exist for the provision of special education to such child, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district in an amount not exceeding three hundred dollars for such child per year for instruction and five hundred dollars for such child per year for transportation, equipment and residential care. (NDS Sec. 151.6)

And California provides special assistance for research:

> 18104. (a) The Superintendent of Public Instruction shall withhold from the total amount allocated in the current fiscal year by subdivisions (c), (e), and (g) of Section 17303.5 an amount equal to .0016 of the amount so allocated in the preceding fiscal year, for use by the Department of Education for research, program development, and evaluation in special education through contractual agreements.
>
> (b) Seventy-five percent of the total amount withheld pursuant to subdivision (a) shall be used by the department to contract for research in the special education of exceptional children. Contractual agreements for such research shall be made with California universities operating a joint doctoral program in special education in cooperation with a state college. For each of the two California universities operating such doctoral program on the effective date of the enactment of this section, the department shall expend for research services at least seventy-five thousand dollars ($75,000) annually for a period of five years. . . .
>
> (e) Twenty-five percent of the total amount withheld pursuant to subdivision (a) shall be used by the department for program development and evaluation through contractual agreements with an agency or organization possessing personnel and the competencies necessary for the successful completion of the project or projects selected for study and analysis. (Sec. 18104 Cal. Stats.)

Recommendations

In 1970 the United States spent about $38.5 billion on public elementary education (38 percent, state; 54 percent, local; and 8 percent, federal). This figure represents an approximate increase of 30 percent over expenditures in 1966. The National Education Association Research Division reports that in 1970, 548 local school bond issues were defeated at the polls. This represents 50.3 percent of the issues voted on and 52 percent of the dollar value. In 1965, 74.7 percent of the bond issues were passed.

While no supporting data are available, it is apparent that handicapped children frequently bear the burden of local fiscal austerity, through the cutting back of special services or eliminating programs completely. During the school year 1968-69, $1.4 billion was spent on educating handicapped children. An additional $2.7 billion was needed to extend services to all handicapped children. As noted earlier, it is estimated that a minimum of $7 billion will be required in 1980. It is apparent that full education opportunity for handicapped children will not be achieved if the full financial responsibility must be borne by the local district.

Therefore it is recommended that: The costs of educating a handicapped child beyond that of educating a non-handicapped child should be assumed by state government. However the child's district of residence should be required to assume an expenditure for the child equal to that expended for a non-handicapped child, regardless of where the child receives an education.

There has been a great deal of concern in recent years about the impact of specific or categorical reimbursement patterns on promoting or supporting inappropriate services for handicapped children. Ackerman and Weintraub (1971) found some evidence of this problem. The experience of the authors of this book supports this finding, although the growth of state administrative and consultative staffs and the increased level of state and local planning appears to be resulting in greater program flexibility with state support, even if such programing is not totally consistent with present reimbursement laws.

Despite this development, in many states rigid reimbursement procedures are resulting in the provision of inappropriate services to some children. For example, some states, which reimburse on a unit basis, define unit as a certain number of children assigned to a special class, thus fostering development of special classes and making resource room programs or special assistance in the regular classroom extremely difficult to reimburse.

Straight sum reimbursements often have little relationship to realistic program costs. A state reimbursing a local district $200 per handicapped child will usually yield little more than $200 worth of needed services. In some instances, this may be sufficient, but in many others it is not.

Special reimbursements have also at times fostered inappropriate services. Special funds for facilities without constraints have at times resulted in segregated facilities for handicapped children, diminishing opportunities for their integration into regular programs. Limiting facility support to rent has resulted in handicapped children in church basements.

Similar problems are found with transportation reimbursement laws. The failure to provide for capital outlay has resulted in contracting with taxi and bus companies for what may be insufficient service and the inability to obtain specially modified equipment and to facilitate the transportation of smaller groups of children. Limiting transportation reimbursement to costs incurred between home and school denies support to important program activities involving travel to other locations, such as work-study programs, diagnostic services, and physical and other forms of therapy.

Chapter 9 discusses the issues related to other provision of public financial assistance to handicapped children in private schools. However, one issue of private schools relates to the problem of how state reimbursement fosters inappropriate services and therefore, it is included here. A number of states have made legal provisions to support handicapped children in private schools when appropriate educational services are not publicly available. In many cases the state has assumed the full tuition grant without requiring local participation. Thus local districts are relieved of an educational burden and at the same time, economize since they do not need to contribute to the child's education that sum which they would provide for a normal child. There is no incentive to begin programs, and the result is more and more children attending private schools and spiraling state costs. For example, in 1966-67 one state spent $24,000,000 for special education, one-half of which went to private schools inside and outside of the state to educate one-tenth of the state's handicapped children receiving state assistance.

Therefore it is recommended that: Laws regulating state reimbursement for the education of handicapped children be broad enough to allow for flexible programing to meet the unique needs of each handicapped child, and that such funding be tied to a state approved plan for which the state and the district can be held accountable. Such a plan and subsequent reimbursement should include provision for, but not limited to, instructional services, administration, transportation, facilities, and personnel for all handicapped children, whether they be located in public day schools, state schools or institutions, hospitals, homes, private schools, or any other facility.

Administrative Structures and Organization

Background

Since 1837 when Horace Mann advocated abolition of the common school district and the re-establishment of the township system in Massachusetts, the states have reorganized school districts through a variety of procedures. As a result, there has been a steady decrease in the total number of school districts during the last 40 years. In 1932 there were 127,244 local school districts in the U.S. In 1965-66, there were 26,800 districts with 2,420 not operating schools.

Although this trend implies that today fewer school districts serve larger populations, it is important to point out that nearly 60 percent of all districts in the nation have fewer than 1,200 pupils. In addition, 40 percent of all pupils are enrolled in districts with over 12,000 pupils. (Morphet, Johns, and Reller, 1967)

The manner in which population centers divide themselves into school districts has direct implications for the types of administrative structures and organization that is necessary to operate educational programs for the handicapped. In general, comprehensive educational programs for the handicapped have flourished in metropolitan areas where a sufficient population base exists for the allocation of community resources. As Voelker (1958) and Lord and Isenberg (1964) noted, there has been great difficulty in establishing services in the rural areas. Chalfant (1967) noted that a local community must have a sufficient population base of handicapped children in order to justify the establishment of programs. Kidd (1970) stated the proposition axiomatically:

> The more infrequent the occurrence of a learning variant warranting special education, the larger the general population base necessary to yield the necessary number of subjects for an economically efficient program of high quality.

The dynamic nature of school district structure and the relatively low incidence of exceptionality characterize the diversity of development in organization patterns for education of the handicapped. In order to meet their educational needs, several organizational patterns may be used individually or simultaneously. These four basic approaches include:

1. Single District: Comprehensive Program. A local school district may develop a comprehensive program for educating exceptional children totally within its boundaries. As stated previously, establishment of a comprehensive program is dependent upon sufficient population base and community resources. Kidd (1970) noted that programming for a low incidence of exceptionality will call for a demographic unit of 500,000 persons.

2. Contracting for Service. School districts have quasi-corporate powers which include the ability to enter into contracts. A small school district may be unable to provide a program for children with low incidence handicapping conditions such as visual impairment and may contract with a neighboring district or agency for this special program. Through a contract, several small districts may combine efforts, usually selecting one district to establish and operate the program.

3. Regionalization. The regional approach goes a step beyond the simple contractual arrangement. The state of New York's Board of Cooperative Educational Services (BOCES) is an example of this approach. In addition to contractual authority, governing bodies of school districts in New York may contract with BOCES units.

Regionalization may also occur in the form of the regional education service center in Texas. Provision is made for instructional materials distribution, consultative assistance, and other service needs for local school districts.

The county is used in many states as the regional level for establishing cooperative programs. Wisconsin, for example, provides for the establishment of handicapped children's education boards.

Another form of regionalization is the voluntary association of school districts to render special services. This arrangement, commonly called the cooperative, directly or through its constituents, develops policies guiding the delivery of services, selection of personnel, and financing. In this manner, school districts voluntarily join to form an agency they collectively regulate. Cooperatives are organized to make a special service available as a result of the desire of member school districts.

4. The Special District. The special district is another alternative. While limitation of functions may be specified, it operates with the same powers and responsibilities as any school district. The special district differs in that it is "special purpose" targeting upon the delivery of a specfic educational service. The district is a legally constituted unit responsible for its own policies and budget. It is subject only to legal limitations and the responsiveness of its patrons.

Lord and Isenberg (1964) delineated the following characteristics of desirable organizational structure for any of the four approaches:

"1. broad and comprehensive responsibility for both elementary and secondary education and their specialized aspects;
2. broad and generally overted professional administration;

3. an area of operation large enough to permit the efficient development of most services local school systems cannot provide for themselves;
4. adequate and dependable financial support with some degree of flexibility in its use;
5. the ability to adapt programs and direction as circumstances and needs change;
6. a sufficient stability to assure the continuation of service in spite of changes and realignments among participating local school systems;
7. a responsiveness to the needs and desires of local school systems as seen from the local level, and
8. the ability to secure a staff sufficiently competent to have something substantially worthwhile to offer participating districts."

In one of the first special education administration books, Leo Connor (1961) noted:

> Too often the pleas of necessity and temporary advantages are utilized to solve rural area problems on a short-term basis. Integration without evaluation, a partial program rather than none at all, poorly prepared and inadequately paid teachers, exemption from school—these are examples of answers given by state and local leaders faced with the problems of a rural area.

Since that time, educators of the handicapped have recognized that such problems and half-solutions were not restricted to rural areas. Deaf-blind, visually handicapped, deaf, and multiply handicapped children are found in every community, and most often too few in number to justify a comprehensive educational program. Since the Connor book, various cooperative structures that enable school districts to combine their resources as well as student population have developed. The problems of coordination of effort, financing and communication still exist in many such associations, but their advantages and the emergence of new administrative patterns designed to minimize these problems portend a more positive future.

Status

In order to create more efficient and effective administrative units, states have attempted to reorganize small districts into larger districts through consolidation. (Chalfant, 1967) Weintraub (1971) suggests that such new administrative structures contributed substantially to the growth of special education programs. Further Abeson and Weintraub (1971), in discussing essential ingredients in state law for education of the handicapped, point out that potential must be provided for establishment of cooperative programs. This section will present a sampling of the law that provides for the establishment of various types of cooperative programs.

Contracting on a Tuition Basis

All states except Hawaii, which has a statewide system, give local school districts major responsibility for educating the children of the state. In addition, these states, except Hawaii, allow for contracting on a tuition basis for special education services, the most basic form of regionalization. The following statute from Maine is a good example:

> A class for handicapped or exceptional children may be established in any public school, or under any other plan, provided it is approved as to requirements for admission, teacher preparation, plan of instruction, necessary facilities and supervision. In administrative units where there are too few handicapped or exceptional children to make the organization of a special class feasible, such children may be entered in a special class in another administrative unit. (RSM Sec. 3117)

The Minnesota statutes are also typical of the way in which state law provides for contracting between districts. Also included are the methods which are used to determine funding and designate responsibility.

Subdivision 1. Special instruction for handicapped children of school age. Every district and unorganized territory shall provide special instruction and services for handicapped children of school age who are residents of the district and who are handicapped as set forth in Minnesota Statutes, Section 120.03, Subdivisions 1, 2, and 3. Every district and unorganized territory may provide special training and services for school age residents of the district who are handicapped as set forth in Section 120.03, Subdivision 4. School age means the ages of 4 years to 21 years for children who are deaf, blind, crippled or have speech defects; and 5 years to 21 years for mentally retarded children; and shall not extend beyond secondary school or its equivalent.

Every district and unorganized territory may provide special instruction and services for handicapped children who have not attained school age. Districts with less than the minimum number of eligible handicapped children as determined by the state board shall cooperate with other districts to maintain a full sequence of programs for education, training and services for handicapped children as defined in Minnesota Statutes 1967, Section 120.03, Subdivisions 1, 2 and 3. A district that decides to maintain programs for trainable handicapped children is encouraged to cooperate with other districts to maintain a full sequence of programs.

Subdivision 4. Special instructions for nonresident children. The parent or guardian of a handicapped child who resides in a district which does not provide special instruction and services within its district may make application to the commissioner for special instruction and services for his child under one of the methods provided. If the commissioner finds that the local district is not providing such instruction and services, he shall arrange for the special instruction and services provided. If the instruction and services are provided outside the district of residence, transportation or board and lodging, and any tuition to be paid, shall be paid by the district of residence. The tuition rate to be charged for any handicapped child shall be the actual cost of providing special instruction and services to the child including a proportionate amount for capital outlay and debt service minus the amount of special aid for handicapped children received on behalf of that child. If the boards involved do not agree upon the tuition rate, either board may apply to the commissioner to fix the rate. The commissioner shall then set a date for a hearing, giving each

> board at least ten days' notice, and after the hearing the commissioner shall make his order fixing the tuition rate, which rate shall then be binding on both school districts.
>
> For the purposes herein, any school district or unorganized territory or combinations thereof may enter into an agreement, upon such terms and conditions as may be mutually agreed upon, to provide special instruction and services for handicapped children. In that event, one of the participating units may employ and contract with necessary qualified personnel to offer services in the several districts or territories, and each participating unit shall reimburse the employing unit a proportionate amount of the actual cost of providing the special instruction and services, less the amount of state reimbursement, which shall be claimed in full by the employing district.
>
> *Subdivision 6.* Placement in another district; responsibility. The responsibility for special instruction and services for a handicapped child temporarily placed in another district for care and treatment shall be determined in the following manner:
>
> (a) The school district of residence of such a child shall be the district in which his parent resides, if living, or his guardian, or the district designated by the commissioner of education if neither parent nor guardian is living within the state.
>
> (b) The district providing the instruction shall maintain an appropriate educational program for such a child and shall bill the district of the child's residence for the actual cost of providing the program, as outlined in subdivision 4 of this section, except that the board, lodging and treatment costs incurred in behalf of a handicapped child placed outside of the school district of his residence by the commissioner of public welfare or the commissioner of corrections or their agents, for reasons other than for making provision for his special educational needs shall not become the responsibility of either the district providing the instruction or the district of the child's residence.
>
> (c) The district of residence shall pay tuition and other program costs to the district providing the instruction and the district of residence may claim foundation aid for the child as provided by law. Special transportation costs shall be paid by the district of the child's residence and the state shall reimburse for such costs within the limits set forth in Minnesota Statutes 1961, Section 124.32, Subdivision 3, and acts amendatory thereof. (MSA Sec. 120.17)

Usually the school district which refers a child to another district for special services pays the per capita cost of maintaining the child in the program. These costs usually include salaries, instructional equipment and materials, administrative costs, plant operation costs, and sometimes a capital outlay assessment. Transportation costs are also usually the responsibility of the district which refers the child, as indicated in the following Massachusetts statute:

> If a child of school age, handicapped (includes mentally retarded, physically handicapped, emotionally disturbed, learning impairments) as described in sections forty-six k of chapter seventy-one of the general laws or in sections twenty-three of chapter sixty-nine of the general laws attends a school or an occupational training program approved by the department, within or without the city or town of residence of the parent or guardian, the school committee of the town where the child resides shall provide transportation once each day to and from such school or occupational training program while the child is in attendance. (Sec. 69-4613 Mass. Gen. Laws)

Regional Approach

The second type of cooperative arrangement for education of the handicapped is the regional approach. In some cases the region served and the political boundary used is the county. An example is the following New Jersey statute which provides for the establishment and operation of county special school districts. It is important to note that residential facilities can be included in the operation of programs and that the children to be served first are those with unusually severe disabilities or multiple handicaps.

> 1. The board of chosen freeholders of any county may establish a county special services school district for the education and treatment of handicapped children, as such children are defined in N.J.S. 18A:46-1, upon its finding that the need for such county special services school district exists. . .
>
> 2. The State Board of Education shall prescribe rules and regulations for the organization, management and control of such special service schools.
>
> 3. a. The board of education of a county special services school district established under this act, may receive pupils from other counties so far as their facilities will permit, provided a rate of tuition not exceeding 50% of the cost of such education is paid by the sending districts.
>
> Any school established pursuant to this act shall accept all eligible pupils within the county, so far as facilities permit. Pupils residing outside the county may be accepted should facilities be available only after provision has been made for all eligible pupils within the county. Any child accepted shall be classified pursuant to chapter 46 of Title 18A of the New Jersey Statutes.
>
> b. The board of education of any county special services school district and the board of education of any other school district within the county thereof are each hereby authorized and empowered to undertake and to enter into agreements with respect to the attendance at schools of the special services school district, of residents or pupils of such other school district and as to the payments to be made or the rate of tuition to be charged on account of such students. Payments shall be made quarterly to the receiving district by each sending district. The payment or rate of tuition per student shall not exceed 50% of the pro rata annual cost of the operation and maintenance of the county special services school district remaining after deduction from such cost of all amounts of aid received by the county special services school district or the county thereof on account of such district or credited thereto from the State of New Jersey or the United States of America or agencies thereof, but excluding from such cost any amount on account of required payments of interest or principal on bonds or notes of the county issued for the purposes of such district. The annual aggregate amount of all of such payments or tuition may be anticipated by the board of education of the county special services school district and by the board of chosen freeholders of the county with respect to the annual budget of the county special services school district. The amounts of all annual payments or tuition to be paid by any such other school district shall be raised in each year in the annual budget of such other school district and paid to the county special services school district.
>
> c. The board of education of any county special services school district, with the approval of the board of chosen freeholders of the county, may provide for the establishment, maintenance and operation of dormitory and other boarding care facilities for pupils in conjunction with any one or more of its schools for special services, and the board shall provide for the establishment, maintenance and operation of such health care services and facilities for the pupils as the board shall deem necessary.
>
> 4. The program and courses of study to be pursued in such special services school and all changes therein shall be approved by the Commissioner of Education, with the advice and consent of the State Board of Education.

5. Courses of study should be pursued to provide as a first priority, programs or courses of study not at that time available in any other school within the county especially for those with unusually severe disability or those with unusual multi-disability. Then courses of study should be pursued, as deemed necessary by the Commissioner of Education which may be available at that time but where there is not sufficient capacity available at that time to accommodate all the students identified and classified as requiring these courses of study. . . .

7. For each county special services school district established in accordance with this act there shall be a board of education consisting of the county superintendent of schools, ex officio, and six persons to be appointed by the director of the board of chosen freeholders with the advice and consent of the remaining members of such board. In any county having a county mental health board, the chairman thereof shall also serve as an ex officio member of the board of education but shall not be entitled to vote on any matter before the board. The appointive members shall serve for terms of 3 years commencing as of July 1 of the calendar year in which they are appointed and to continue until their successors are appointed and qualify, except that of those first appointed two shall be appointed for terms of 1 year, two for 2 years, and two for 3 years. . . .

8. A member of the board of education created under the provisions hereof shall be a citizen and a resident of the county, shall have been such citizen and resident for at least 2 years immediately preceding his becoming a member of the board, and shall have shown an interest in children with an unusual disability to learn or in the field of mental health. . . .

12. On or before February 1 in each year the board of education of a county special services school district shall prepare and deliver to each member of the board of school estimate an itemized statement of the amount of money estimated to be necessary for the current expenses of and for repairing and furnishing schools or buildings of the county special services school district for the ensuing school year.

13. a. Between February 1 and February 15 in each year the board of school estimate shall fix and determine by official action taken at a public meeting of the board the amount of money necessary to be appropriated for the use of the county special service school district for the ensuing school year exclusive of the amount to be received from the State as provided in section 16 of this act. . . .

c. The board of chosen freeholders shall, upon receipt of the certificate, appropriate, in the same manner as other appropriations are made by it, the amount so certified, and the amount shall be assessed, levied, and collected in the same manner as moneys appropriated for other purposes in the county are assessed, levied, and collected, unless such amount is to be raised as otherwise hereinafter provided in this act.

14. Whenever a board of education of a county special services school district shall decide that it is necessary to raise money for the purchase of lands or buildings for school purposes or for erecting, enlarging, improving, repairing, or furnishing, a building or buildings for the use of the school district, it shall prepare and deliver to each member of the board of school estimate a statement of the amount of money estimated to be necessary for such purpose or purposes. The board of chosen freeholders may appropriate such amount which shall be raised, assessed, levied, and collected at the same time and in the same manner as moneys appropriated for other purposes in the county are raised, assessed, levied, and collected; or the board of chosen freeholders may appropriate and borrow such amount for the purpose or purposes aforesaid by issuance of bonds or notes of the county pursuant to the Local Bond Law, notwithstanding any debt or limitation or requirement for down payment therein provided for. . . .

15. All teachers, principals, and other employees of the board of education of the county special services school district are hereby held to possess all rights and privileges of teachers, principals and other employees of boards of education of other school districts as provided in Title 18A of the New Jersey Statutes. . . .

17. The board of education of any county special services school district shall appoint an advisory committee of not less than ten members consisting of representatives of recognized parent and professional organizations working exclusively for

> the children classified as having unusual disability, as well as at least one psychiatrist, one psychologist, one social worker, and, in any county in which the Commissioner has established a department of child study, the county child study supervisor. The committee shall meet at least four times per year to consider matters referred to it by the board and to make recommendations to the board. . . . (N.J.S. 18a:58-6)

The county approach is also used in California although here mandatory responsibility is given to the county superintendent to provide for the trainable mentally retarded and physically handicapped in counties with a certain number of students. The specific law pertaining to the physically handicapped is provided below:

> The county superintendent of schools shall establish and maintain programs for physically handicapped minors who come within the provisions of Section 6801 or 6802, including cerebral palsied, orthopedically handicapped, visually handicapped, or aurally handicapped, and who reside in the county and in elementary or unified school districts which have an average daily attendance of less than 8,000 in the elementary schools of the districts or in unified or high school districts which have an average daily attendance of less than 8,000 in the high schools of the districts, whenever such districts have not provided nor entered into contract with other districts to provide such programs. (Sec. 894 Cal. Stats.)

In some situations, even a county is too small to create a population and resource base large enough to effectively provide an educational program. To create an administrative structure to overcome this problem, North Dakota law permits creation of multiple county boards:

> SECTION 6. MULTIPLE COUNTY BOARDS. Whenever it is deemed desirable by the boards of county commissioners of two or more counties, such counties may join together in the formulation of a multiple county board of special education. Such board shall consist of one member from each county commissioner district within the several counties, appointed by the respective county superintendents of schools and approved by the respective boards of county commissioners. Vacancies shall be filled in the same manner as provided in original appointment. Such multiple county board shall designate one of the county treasurers to act as treasurer for special education funds and one of the county superintendents of schools to act as secretary and executive officer of the board. The remaining county superintendent of schools shall perform such other duties in connection with the special education program as the joint board of special education shall designate.
>
> SECTION 7. PROGRAM AND FINANCING OF MULTIPLE COUNTY BOARDS. The multiple county board shall prepare a program and budget and submit it to the joint board of county commissioners for approval in the same manner and at the same time as provided in the case of individual county programs. The amount budgeted and approved shall be prorated among the counties according to the assessed valuation of each county or upon such basis as the respective boards of county commissioners shall agree. The amount prorated to each county shall be

> included in the respective county budgets in the same manner and shall be subject to the same procedures, limitations, and conditions as those specified for individual county special education budgets and tax levies. Provisions applicable to individual county programs in regard to approval by the department of public instruction and payments from the state and the state or county equalization funds shall also apply to multiple county programs. (NDS Sec. 15-59.1-01 to 15.59.1-10)

The county type of program has some problems.

> Not all counties have adequate educational structures and authorities to carry out the responsibilities of providing special education. Moreover, in some cases a unit as large as the county is not necessary to provide for the population needs, while in other cases, the county unit is not sufficient to meet these needs. In very rural areas, it is sometimes necessary to incorporate four or more counties before an adequate population base can be achieved. (Weintraub, 1971)

As indicated earlier, regional programs do not always conform to existing political boundaries such as the county. Examples include Illinois' Joint Agreement District and New York's Board of Cooperative Educational Services. The law creating the joint agreement is as follows:

> To enter into joint agreements with other school boards to establish programs for children of the type described in Section 14-1, to provide the needed special educational facilities and to employ a director and other professional workers for such a program. The director may be employed by one district and such district shall be reimbursed by other districts that are parties to the agreement on a mutually agreed basis. Such agreements may provide that one district may supply professional workers for a joint program conducted in another district. (Sec. 10-22.31 Ill. Stats.)

The New York BOCES programs are units set up by a group of school districts which purchase, on a per capita basis, educational services such as those for the handicapped. Districts have the option of providing services themselves or purchasing them from the BOCES unit. Consequently in some cases, a local district might provide its own program for the educable mentally retarded, but purchase services for trainable retarded children. The board of the BOCES unit includes the superintendent of all the districts participating in the BOCES program.

This approach, the regional cooperative, has become common in many states. Weaknesses of this approach include differences in salary schedules which complicate hiring, supervisory problems when existing classrooms are used, and the disparity among the districts' expenditures for equipment.

Review of the laws pertaining to cooperative programs indicates that there are a limited number of provisions governing the longevity of contractual arrangements. In the following Connecticut law on regional programs, the important phrase "long-term" is used:

> State grants for cooperative regional special education facilities. Any school district which agrees to provide special education as part of a long-term regional plan approved by the state board of education, for children requiring special education who reside in other school districts, shall be eligible to receive a grant in an amount equal to the net cost to such district of providing, constructing, or reconstructing and equipping appropriate facilities to be used exclusively for children requiring special education, provided such facilities shall be approved by the state board of education and shall be an adjunct to or connected with facilities for children in regular school program, except when the state board of education determines that separate facilities would be of greater benefit to the children participating in the long-term special program. (Sec. 10-76e Conn. Gen. Stats.)

Wisconsin law also provides specific machinery for the dissolution of the cooperative boards and the withdrawal of districts from the boards:

> (7) (a) The school board of any district which is included under the administration of a board may withdraw from participation in any part of the program only with the approval of the state superintendent after he has conferred with the board and is satisfied that such withdrawal is in the interest of the program in the county and the school district affected. Such withdrawal shall be effective only if the school board has the approval of the state superintendent to establish a comparable part of a program. Such withdrawal shall not be effective until the end of the next full school term. The withdrawing school district shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.
>
> (b) A program established under this section may be dissolved by action of the county board, but such dissolution shall not take place until the end of the school term in which the action was taken. When a program is dissolved, assets and liabilities shall be distributed under s. 66.03 to all units which participated in the program. (Sec. 115.81 WSA)

Special School District

The final type of cooperative venture is the special school district which is completely autonomous from the regular school district. Use of this approach is not widespread. It is typified by the St. Louis County, Mo. Special School District which provides education and training for handicapped children in 29 school districts. The statutes creating and authorizing the St. Louis district are as follows:

> 165.740. *Special Districts for Handicapped Children in Certain Counties, Powers, Boundaries, Purposes.* 1. In all counties of the first class, having a charter form of government, the qualified voters may organize and create a special school district for the education and training of handicapped children for the county at large.
>
> 2. When such new district is organized, it shall be a body corporate, and political subdivision of the state, and may be known as "the Special District for the Education

> and Training of Handicapped Children of . . . County, Missouri," or by some other name selected by the board with the approval of the state board of education, and, in that name, may sue and be sued, levy and collect taxes within the limitations of the Constitution, issue bonds and possess the same corporate powers as six-director school districts other than urban districts. All constitutional provisions and laws applicable to the organization and government of six-district school districts other than urban districts, are applicable to districts organized under the provisions of sections 165.740 to 165.780. (1963)
>
> 3. The boundaries of a special school district organized under the provisions of sections 165.740 to 165.780 shall coincide with the boundaries of the county in which the district is organized and shall be in addition to any other school districts existing in the county. (1963)
>
> 4. The special school district shall provide free instruction, classes, school or schools, for children under the age of 21 years, resident within the county, who are physically or mentally handicapped, including the blind or partially seeing, the deaf or hard of hearing, the crippled, and the mentally retarded or mentally deficient, who are capable of instruction or training, and for all other categories of physically or mentally handicapped children which are hereafter approved for special instruction by the state commissioner of education, including hyperkinetic children; those of the type having a malfunction in the area of behavior and learning where the brain does not function correctly because of immaturity on a genetic or metabolic basis and children having a word-blindness, seizures and aphasic. (1963)
>
> 165.763. *Establishment of Schools and Classes for Handicapped-Entitled to State Aid.*
>
> 1. The board of education of the special school district may establish schools, or classes within schools, of any school district within the county for any of the classes of children designated in section 165.740 and shall establish classes for any such children that are requested by the board of directors of any school district within the county in classrooms furnished by the school district, if the number of children available for instruction is sufficient under standards determined by the state commissioner of education. All costs of instruction shall be paid by the special school district. All children attending schools or classes of the special school district shall be included in the attendance records of the special school district for the apportionment of school funds. The special school district is entitled to apportionment of funds in the same manner as six director school districts even though the levy of taxes made by the special school district is less than that required by section 161.25.
>
> 2. In addition, the special school district may contract with any other school district within the county to integrate children in a special school district class established in a school of the other district into classes of the other district for part of the school day and shall pay to the other district, as tuition for each such child, the same percentage of the yearly tuition established by the other district as part of the school year which the child is in a class of the other district bears to the entire school year of that district. (1963)
>
> 165.773 *Free Transportation to be Provided—State Aid.* The Board of Education of each special school district may provide for the free transportation of all handicapped children under the age of 21 years within the county attending its classes, or schools, and shall make all needful rules and regulations for free transportation . . . . (Sec. 165.740, 165.763, 165.773 Mo. Stats.)

Chief attributes of this approach are that the needs of the handicapped are placed prominently in the public purview. On the negative side, the possibility exists that the children will be separated from the mainstream of education.

In some states, there is provision for local districts to cooperate with state agencies for the delivery of services. The following Nebraska statute illustrates this approach:

> Section 1. The Nebraska School for the Visually Handicapped, upon approval of the Commissioner of Education, may contract with a local school district, educational service unit, or public institution of city, county or state government for educational services which cannot be provided more effectively by the school. (LB 242 Acts of 1969)

Similarly, Minnesota law also like many states provides that:

> Special instruction or training and services for handicapped children may be provided by . . .
>
> (e) instruction and services in a state college laboratory school;
>
> (f) instruction and services in a state residential school or a school department of a state institution approved by the commissioner. . . . (MSA Sec. 120.17)

Recommendations

Ideally, every handicapped child ought to be educated in as normal an environment and as close to home as possible. However, often the unique learning needs of these children and the demographic conditions under which they live require alternative organization patterns from those used to educate "normal" children. The use of patterns such as contracting between school districts is not unique to special education. For years vocational education, film and materials centers, adult education, and other areas of education have employed such approaches.

Over the last decade as special education interest has grown, there has been increase in the usage of varied organizational patterns.

There is no basis to determine the single best approach. Such determination must be made on the basis of the children to be served and the size of the geographic and political areas required to establish a program. Many relatively small school districts will find that they have a sufficient number of educable retarded children to establish a program of their own. The same school district will probably have to combine with other districts to serve physically handicapped children adequately, while a medium size school district might be able to provide such services on their own. Both small and medium districts will probably have to combine with other districts to serve deaf or blind children. In some states regional services for the deaf, for example, encompass 10 or more districts. There are perhaps only five or six school districts large enough to serve severely multiply handicapped children. Thus many districts and, in some cases, several states will have to get together to serve these children.

There are always problems when governmental jurisdictions have to work cooperatively. In most cases these problems have financial roots. Questions of how charges are to be assessed, who will provide accounting and administration, who will own facilities and equipment, etc. often can complicate and defeat needed cooperative efforts. For this reason, it is necessary that legal structures be provided to legitimize the procedural aspects of such cooperatives.

However, the creation of highly formalized and separate districts often makes the goal of moving handicapped children into normal environments difficult. Thus the most efficient approaches may not always be the best for the child. For special educators, this is a continuing dilemma, which will take time and evaluation to fully resolve.

It is therefore recommended that: Provisions be made in state law to provide for cooperative arrangements among school districts to enable expanded bases of population and resources to facilitate the development of educational services for handicapped children. Such arrangements should only be approved by the state if the districts can demonstrate the ability to provide comprehensive services for the children to be served. The law should encourage the development of such cooperatives where appropriate.

The governing board of the cooperative should be composed of representatives of the member districts and depending on the size of the cooperative, it should have the ability to own property, establish its own administration, hire staff, and raise and receive revenue.

Provision should be made to require that participating districts maintain membership in the cooperative. Approval to withdraw should reside with the state, upon evidence that appropriate alternative services are available under another organizational pattern. Districts withdrawing should continue to be obligated for their portion of debts incurred by the cooperative.

Services

Background

Prior to 1920, most U.S. education programs for the handicapped were carried on in residential schools—many of them, private facilities—where static concepts of custody, care, and treatment prevailed. The concept of a special curriculum for the exceptional child was not yet fully comprehended, although documentation of such a curriculum (Itard, 1801; Sequin, 1846; Montessori, 1912) did exist. After 1920, the static concepts of education of the handicapped underwent radical and rapid change. Cruickshank (1958) has stated this transition eloquently:

> Such transition from static to dynamic concepts is not to imply that certain types of problems ceased to exist, for there remain today numerous exceptional children, particularly those of very low intelligence or severe physical disability, for whom life-span care and custody must be provided. All of these factors in concert made community educators realize that the education of exceptional children was in large measure their responsibility. When the philosophy of local responsibility for exceptional children was accepted, marked changes appeared in the whole field. New philosophies, new methods, new techniques in education were developed within a relatively short period of time.

Since special curriculums had not been developed for handicapped children, "relief for the regular grades and the teachers of normal children, remediation, and handiwork were the major bases upon which the early classes for the mentally handicapped were organized." (Cruickshank, 1958) In addition, the number of trained teachers to work with the children was miniscule. As a consequence, those handicapped children who did enter into the regular classrooms received services identical to those provided to the normal students. Scant attention was paid to the unique needs of the handicapped. In those districts, especially urban areas, where options existed special classes were begun. However, these classes often became mere depositories for general education's problem children and teachers of the handicapped were ill-equipped to satisfactorily serve them.

From 1915 to 1930, there was a marked trend to increase both public and private educational services for the handicapped. However, the nation's economic depression era and other factors served to slow the trend. Cruickshank (1958), in describing three reasons for the sluggish growth of special education during the 1930's notes that many classes were simply abolished. He cites the following developments as instrumental:

1. The Great Depression necessitated budgetary restrictions and concommitantly necessitated elimination of "bonus" educational services.
2. Many communities had moved into special education rapidly without adequately preparing teachers of the handicapped in terms of quality or quantity.
3. A subtle, yet dysfunctional force was represented by the "thoughtless advocation of unplanned heterogeneous grouping.

In the years following 1940, public and private groups were important stimuli in the growth of educational services for handicapped children. Mackie (1963) pointed out an increase in the number of public school systems offering special services between 1948 and 1963. In 1948, 1,500 school sytems operated programs. By 1963, there were 5,600 school systems. Schools also made extensive advances through use of cooperative arrangements. Mackie (1963) estimated, "As many as 8,000 additional school systems probably arranged for the instruction of some or all of their exceptional children through cooperation with neighboring communities."

The number of students receiving special services mushroomed 280 percent between 1948 and 1963. In 1948, only 12 percent of 3.8 million children were receiving the special help they needed. Fifteen years later about 27 percent of the estimated 6.1 million school age children participated in special programs. While large numbers of children were not receiving educational services a "genuine narrowing of the gulf between the number of children requiring special education and the number receiving it [had] occurred." (Mackie, 1963) By 1970, the percentage of handicapped children receiving special educational services had grown to approximately 40 percent. (SFICEC, 1971)

Program Options

While some of the program options used to deliver appropriate services to handicapped children have been in use longer than others, all have been important in the development of state programs. Cruickshank (1958) named six program options: 1) the residential or boarding school; 2) the special school in a local community; 3) the special class; 4) the resource room; 5) the itinerant teacher or consultant, and 6) home and hospital instruction.

Other program options which have been more recently developed and used, include the temporary diagnostic classroom, the preschool program, and the crisis classroom. These options emphasize mainstream education for handicapped children—keeping them in regular classes as much as possible.

Staff of the public school programs include the educational diagnostician, helping teacher, crisis teacher, and teacher aide, as well as the consultative services of medical doctors, pychologists, psychiatrists, and physical and occupational therapists. While these personnel do not supplant the special class teacher, they help to assure that each child, including the severely impaired, receives the services he needs in as normal an educational setting as possible.

Instructional Materials

It has long been realized that the effectiveness of teachers of the handicapped is heavily influenced by the access to and use of instructional materials and modern methods. An attempt to improve this situation was formulated by the 1962 President's Panel on Mental Retardation. The group recommended that a network of instructional materials centers be established to provide special educators and allied personnel with easy access to more classroom materials and information.

In 1964, the Division of Handicapped Children and Youth in the U.S. Office of Education funded two pilot centers. Their success led to establishment of the Network of Special Education Instructional Materials Centers (SEIMC's) in 1966, which included eight new centers and The Council for Exceptional Children's ERIC Information Center on Exceptional Children. Four more centers were added in 1967.

The development of four Regional Media Centers for the Deaf, established in 1964 and 1966, closely paralleled the instructional materials centers. In 1969, both operations were incorporated into a single nework —the Special Education IMC/RMC Network. Each center provides consultation services, media, and materials, and conducts conferences and inservice training. Findings are disseminated throughout the network for use by classroom teachers of the handicapped.

Today the regional instructional materials centers are transferring many of their direct services to teachers to state and locally funded Associate Special Education Instructional Material Centers. Using the federally sponsored centers as a guide, state departments of education and local school districts have established over 300 local associate centers.

Preschool Services

Just as research emphasizes the crucial importance of the first few years of a child's life, the importance of early identification and treatment of handicaps cannot be overestimated. Preschool programs for the handicapped, however, have been a recent phenomenon. In 1963, the U.S. Office of Education began attempts to systematically estimate nursery school and kindergarten enrollments for all areas of exceptionality. Public day schools reported 33,000 children in these programs, with speech impaired children comprising the largest number. Only 1,000 retarded children were reported as receiving services. (Mackie, 1963)

Cruickshank (1958), citing the importance of preschool educational programs for the handicapped, also pointed out:

> To be permitted to provide services to exceptional children at one, two, or three years of age means that therapeutic facilities will be made available, that parent counseling will be undertaken, and that other services will be brought to the child, so that at the time when he is old enough to enter school he will be able to profit from instruction to the maximum. Early discovery, implemented by legal provisions which make early treatment and related services possible, will mean less children in special education in the public schools and at the least will mean that special education will be in a better position to serve exceptional children when they do come into the elementary schools.

The usefulness of preschool programs in helping to identify young children with handicaps has been emphasized by the Headstart program. Data collected by the U.S. Bureau of the Census on children enrolled in 12-month Headstart programs indicate 28 percent of the children have abnormal vision or hearing, major medical or psychological problems, or combinations.

Preschool programs for handicapped children have not yet developed on a comprehenive national basis. In 1969, 26,394 preschool handicapped children were being served through federal assistance. In testimony before the Select Subcommittee on Education of the U.S. House of Representatives on the Comprehensive Child Development Act of 1971, Weintraub remarks on the inadequate delivery of educational services to preschool children.

> We do have one figure of 24 million children in the population ages zero to six, which would mean that there are approximately 2.4 million handicapped children.
>
> The figures from the Office of Education, the Bureau for the Education of the Handicapped, indicate that only about 1 percent, as reported by the states in their annual reports of that age group are presently receiving services.

Transportation and Family Services

Many elements in an education program for handicapped children are required to enable these children to develop. The provision of ancillary services such as transportation and family counseling are integral parts of comprehensive programs.

Many handicapped children do not attend school because there is no transportation. Some children with physical handicaps, for instance, require special seats and help in boarding the vehicle. In addition, many of the children do not live within standard transportation routes of the public schools. Since some special programs are cooperative efforts on the part of neighboring school districts, transportation is a key problem to resolve. Unnecessary limitations placed on the handicapped include regulations requiring the handicapped to travel on separate buses. In view of the low incidence of certain disabilities, such a policy appears to foster unnecessary duplication of services. When the child's home is too distant from school, temporary placement in a foster home has enabled him to attend school. While there are no estimates of the numbers of handicapped children excluded from school for lack of transportation, local directors of special education frequently indicate this is a critical component of program development.

Incongruities between the home and school experiences of the child are often a major detriment to his development. The necessity of communication between school personnel and the parents of handicapped children has long been recognized as a prerequisite of a comprehensive educational program. Family services such as parent counseling, the visiting teacher, and the "teacher mom" programs enhance the continuity of the home and school experience.

Service Options

In education today, there is movement toward more complete integration of the handicapped child into the regular classroom. This means the handicapped child attends school with his normal peers to whatever extent is compatible with his fullest development. The evolution of various educational program options is a reflection of increasing concern for diminishing stigma, individualizing instruction, and providing equal opportunity to an education.

Deno (1970) questions the efficacy of special classes for most handicapped children and suggests a system that emphasizes mainstream educational opportunity:

> It is a system which facilitates tailoring of treatment to individual needs rather than a system for sorting out children so they will fit conditions designed according to group standards not necessarily suitable for the particular case. It acknowledges that the school system is a giant intelligence test involving multiple work samples and multiple performance judges who invoke highly variable criteria in making their judgments. It is designed to facilitate modification based upon changing conditions and new assumptions.

Reynolds (1962), Deno (1968), and Willenberg (1968) have formulated conceptual models of instructional alternatives for service delivery in which program options are placed on a continuum, the extent of intervention being a function of the extent of the child's need for special services.

Status

The states follow three basic patterns in defining the educational services to be provided for handicapped children. The New York Code is an example of the first pattern, giving general authority to the Commissioner of Education to formulate such rules and regulations pertaining to the physical and educational needs of such children as he deems to be in their best interests. (Sec. 4402 N.Y. Stats.)

The second approach is more specific, citing the methods by which special instruction and services may be provided. Minnesota's law serves as an example:

> (a) Special instruction and services in connection with attending regular elementary and secondary school classes;
> (b) The establishment of special classes;
> (c) Instruction and services at the home or beds of the child;
> (d) Instruction and services in other districts;
> (e) Instruction and services in a state college laboratory school or a University of Minnesota laboratory school;
> (f) Instruction and services in a state residential school or a school department of a state institution approved by the commissioner; or by any other method approved by him.
> (g) Instruction and services in other states. (MSA Sec. 120.17)

A third approach, used in several states, is division of the laws into separate sections, with definitions of services in terms of specific disabilities. For example, in California:

> (a) Special classes (elementary and secondary). Under this program educationally handicapped pupils unable to function in a regular class are assigned to a special class. At the elementary level, the special class shall be maintained for a minimum school day. The special class for junior and senior high school pupils may be maintained for one or more class periods. In this program, fundamental school subjects shall be emphasized as prescribed by the State Board of Education.
>
> (b) Learning disability groups (elementary and secondary). In this program, the pupil remains in his regular class but is scheduled for individual or small group remedial instruction given by a special teacher.
>
> (c) Specialized consultation to teachers, counselors, and supervisors (elementary and secondary). Under this program, specialized consultation is provided teachers, counselors and supervisors relative to the learning disabilities of individual pupils and special instruction (elementary and secondary). Under this program a pupil who is unable to function in a school setting and who does not attend school receives instruction at the appropriate grade level at home or in a hospital or in a regularly established non-profit, tax-exempt, licensed children's institution. (Sec. 6751 Cal. Stats.)

Transportation

Only a few states have sought to specify the full legal basis for transportation services within the special education section of the law. Illinois, however, deals with transportation between school districts in the following manner:

> If a child, resident of one school district, because of his handicap, attends a class or school for any of such type of children in another school district, the school district in which he resides shall grant the proper permit, provide any necessary transportation, and pay to the school district maintaining the special educational facilities the per capita cost of educating such children. (Sec. 14-7.01 Ill. Stats.)

Alaska provides transportation to exceptional children without any minimum distance requirements, although whenever practicable, the children are to travel in vehicles separate from the regular students. (Sec. 14.30.147 Alas. Stats.) Idaho sets a maximum distance limitation of 1½ miles for the provision of transportation and provides that it may be waived by a board of trustees of a local school district if the age or health of the pupil warrants it. (Sec. 33-100 Idaho Code)

Maine empowers the local superintendent of schools to provide transportation for special education students in public and private schools, regardless of whether these classes are within the administrative unit, if the district of residence is not providing the necessary services. (RSM Sec. 3561) In some states, the law allows board and lodging of the pupil if it is more practicable than transportation. (Sec. 33-1503 Idaho Code)

Instructional Materials

Some states have enacted provisions to improve instructional programs for handicapped children through dissemination of special materials. California, for example, empowers the state librarian to,

> . . . duplicate any braille book master, other than textbook masters, presented by any legally blind person directly to the State Librarian for duplication. The State Librarian may duplicate any braille book master, other than textbook masters, presented by any other person or agency directly to the State Librarian for duplication. (Sec. 27056, Cal. Stats.)

Illinois has legislated an educational materials coordinating unit within the Office of the Superintendent of Public Instruction:

> There shall be established within the Office of the Superintendent of Public Instruction under the direction of the Superintendent, an educational materials coordinating unit for handicapped children to provide:
>
> 1. Staff and resources for the coordination, cataloging, standardizing, production, procurement, storage, and distribution of educational materials needed by visually handicapped children and adults.

2. Staff and resources of an instructional materials center to include library, audio-visual, programmed and other types of instructional materials peculiarly adapted to the instruction of handicapped pupils.

The educational materials coordinating unit shall have as its major purpose the improvement of instructional programs for handicapped children and the in-service training of all professional personnel associated with programs of special education and to these ends is authorized to operate under rules and regulations of the Superintendent of Public Instruction with advice of the Advisory Council. (Sec. 14-11.01 Ill. Stats.)

Educational Services in State Institutions

Although indications are that residential school enrollments are declining, many handicapped children receive educational services in these facilities. Recent data (Mackie, 1963) indicated that slightly more than 110,000 children were receiving educational services there. She also said:

"the largest proportion of emotionally disturbed and socially maladjusted, blind, and deaf children in special education are in residential school programs. In contrast, by far the largest number of mentally retarded children in special education were reported to be in day school programs."

The Nebraska Department of Education has responsibility for the educational program in the state institution for the visually handicapped, with the law specifying the method of instruction to be used:

> . . . so called oral method of instruction shall be used by such teachers and if, after a fair trial of nine months, any such children, for any reason shall be unable to learn by such oral method, then no further expense shall be incurred in the effort to teach such child. (NRS Sec. 79-1413)

Another section indicates that the department may provide educational services to visually handicapped children unable to attend the school for the visually handicapped. (NRS Sec. 83-210)

In Maine, deaf children "unable to benefit" from the methods of instruction taught in the public schools are required by law to attend the state institution for the deaf during the school year. (RSM Sec. 2905)

The astonishing number of mentally retarded children and emotionally disturbed children in state institutions not receiving educational services is a tragedy of major proportions. The President's Committee on Mental Retardation (1969) has noted that, "Many of the 200,000 institutionalized mentally retarded persons continue warehoused in dehumanizing residential programs that make no serious attempt to rehabilitate residents."

Similar criticism of educational programs in residential institutions for the emotionally disturbed has been made by the Joint Commission on Mental Health of Children (1969) which reported that school is neglected or given secondary emphasis in most residential treatment programs. The

Commission urged improvement in residential programs and observed:

> In 1966 an estimated 35,800 children under eighteen were in mental hospitals. Many of these institutions fall far short of meeting the needs of children and youth. There are a few superb institutions in the country, many that are marginal; however, most are disgraceful and intolerable.

Programs in state institutions for the mentally retarded and for the emotionally disturbed are not usually the responsibilities of the state departments of education. Growing concern, however, surrounds the issue of responsibility for these educational programs which form an important part of the total state effort to provide education for the handicapped. While little legal attention has been addressed to this issue, it is clear that the right to an education includes all children—not just those residing in the community. As indicated in Chapter 4, the *Pennsylvania Association for Retarded Children* case should provide much needed clarification.

Recommendations

Special education is a dynamic profession which is discovering new techniques and strategies for meeting the educational needs of handicapped children. However, this dynamism often breaks down at the delivery stage. How do we deliver the appropriate services to the child?

Special education can be conceptualized as a continuum whose one extreme is minor assistance to children in otherwise normal environments to the other extreme of education for children in residential environments. The "1971 Policy Statement of Basic Commitments and Responsibilities to Exceptional Children" of The Council for Exceptional Children presents eight points along the continuum:

1. Regular school situation in which allowances are made for the individual differences of a typical school enrollment;
2. Regular school situation in which child needs and is provided with supplementary services only; no basic modifications required in the school's instructional offerings; child educated in regular classroom;
3. Regular school situation in which child requires some supplementary teaching in the regular classroom; child may require some modification in materials and procedures offered by the regular classroom teacher;
4. Regular school situation in which child receives specialized supplementary teaching for example, in itinerant speech and hearing services, and integrated programs for the visually and hearing impaired;
5. Regular school situation in which child is enrolled and receives specialized instruction in a special day class; child may participate part-time with regular class pupils in selected subjects;
6. Special day school in which child receives fulltime specialized instruction in separate facilities and programs;
7. Home or hospital instruction for child who is unable to attend school;

8. Residential situation as in the case of the schools for the blind and the deaf, or a residential school for the mentally retarded or the emotionally disturbed. Education is provided in addition to residential care.

Many handicapped children do not receive the education they need, because the full range of services along the continuum are not presently available in their community. As a result, children are excluded or placed in inappropriate programs.

The knowledge of what to do to educate handicapped children is available. The burden now rests with government to provide the delivery systems that will match each child with the program he needs.

Therefore it is recommended that: Each state, as part of its plan for the education of handicapped children, assure the availability and delivery of a full continuum of educational services ranging from the regular classroom to the residential institution.

Private Schools

Private schools have always played a significant role in American education, but they have been even more significant in education of handicapped children. Over the years, the failure of the public schools to educate all handicapped children has resulted in the development of numerous private, nonprofit schools providing day or residential services.

In many cases, these schools are substantially supported through various charities and fund raising campaigns, and by local, state, and federal governments. In addition, most private schools charge a student tuition and/or expense fee. These fees range from less than $100 to over $10,000, depending on the school and the services provided.

While this chapter assumes that parents have the right to send their children to a private school at their own expense, the focus is on the legal issues involved in educating handicapped children in private schools as a matter of public policy rather than at parental initiative.

Background

The first schools for the handicapped received their impetus at the beginning of the 19th century from Horace Mann and Samuel G. Howe, members of the Massachusetts State Board of Education, and Henry Barnard, a member of the Connecticut State Board of Education. In 1817, with the assistance of The Reverend Thomas Gallaudet, the American Asylum for the Education and Instruction of the Deaf and Dumb (now the American School for the Deaf) was established in Connecticut. Fifteen years later the Perkins Institute for the Blind was opened in Massachusetts, followed in 1850 by the Massachusetts School for Idiotic and Feebleminded Youth (now the Fernald School). While these residential schools received some support from state legislatures and other sources, they were governed as private schools and charged additional fees. In 1848, 1851, and 1852, the legislatures of Massachusetts, New York, and Pennsylvania appropriated funds to private schools for education of the "feeble-minded." Many of the state schools for the handicapped as well as many local public programs began as private schools, and some, such as the Maryland State School for the Deaf, still remain privately governed.

As public school programs for handicapped children have grown, there has been an almost parallel growth of private schools to serve those children whom public education has excluded. It is estimated that from 12,000 to 15,000 such schools exist. They can be found in almost any community and range from programs for several children organized by their parents to programs for hundreds of children from across a state or even the country. The quality varies from little more than babysitting to educational programs of high excellence. Their facilities range from private homes and condemned schools to model modern buildings.

The degree of regulation of these schools varies greatly from state to state. If state aid is involved, the regulations are generally tighter although far less stringent than those required of public schools. Usually these are limited to compliance with fire and safety codes and school attendance procedures such as length of school year, school day, etc.

There are generally three ways in which handicapped children become educated in private schools. The first, as noted earlier, is parental decision to seek private education as an alternative to public education. This decision may result from a desire for religious instruction, an education program of higher quality, or the need for residential placement. The second reason is the refusal of the local school district or the state to accept educational responsibility for the child, forcing the parents to seek other sources of education for their child. In these cases, parents usually find out about private schools from parent organizations or concerned professionals. Finally, handicapped children are placed in private schools on the recommendation of local or state school officials, especially when appropriate educational programs are not available in the community or neighboring communities.

Status

Many states have special education laws which enable parents to obtain services for their handicapped children in non-public facilities when public services are not available. The laws to authorize tuition payment to such schools define tuition payment and the population to be served, establish local school district or state responsibility for certification of children to be served, set standards for such schools, provide assistance for transportation, and control payments to out of state schools.

The following excerpt from Georgia law is an example of an authorizing statute:

> If an exceptional child cannot be educated in his local school system on criteria established by the State Board of Education, his parents may seek educational programs appropriate to the child's needs. Upon application to the Program for Exceptional Children, State Department of Education, and upon approval of said agency, the school or agency educating the exceptional child shall be reimbursed for tuition, fees, transportation, and books. . . . (HB 453 Laws of 1967)

There is great variety in the manner in which states control the amount of tuition to be paid to such schools.

The most uncommon approach is assumption of the total cost of such tuition. This is exemplified in the following provision in Maine law:

> A class for handicapped or exceptional children may be established in any public school, or under any other plan, provided it is approved as to requirements for admission, teacher preparation, plan of instruction, necessary facilities and supervision. In administrative units where there are too few handicapped or exceptional children to make the organization of a special class feasible, such children may be entered in a special class in another administrative unit. The sending unit shall pay to the receiving unit or private school the actual per pupil cost incurred in the operation of the program for handicapped or exceptional children during the preceding school year. The per pupil tuition charge shall be computed on the basis of financial reports filed by the administrative unit or private schools. Such financial reports shall be filed July 1st of each year in such form as the state board may require, and the allowable tuition charge may not exceed the per pupil operating cost as determined by the state board from the financial reports of the preceding school year. Other programs consistent with the purpose of this chapter may be developed with the approval of the commissioner. (RSM Sec. 3117)

Another approach is similar, but adds a requirement for parental payment on a sliding scale depending on their income. Massachusetts, for example, has such a stipulation:

> . . . The expenses of the instruction and support of such children therein actually rendered or furnished, including their necessary traveling expenses, whether daily or otherwise, but not exceeding ordinary and reasonable compensation therefor, shall be paid by the commonwealth; but the parents or guardians of such children, who are able wholly or in part to provide for their support and care, to the extent of their ability may be required by the department to reimburse the commonwealth therefor. (Sec. 71-461 Mass. Gen. Laws)

Another approach is a straight or maximum sum reimbursement by the state for tuition. The payment frequently varies according to specific disabilities. The following Pennsylvania law is an example of such an approach:

> Cost of Tuition and Maintenance of Certain Exceptional Children in Approved Institutions.—(a) When any child between the ages of six (6) and twenty-one (21) years of age resident in this Commonwealth, who is blind or deaf, or afflicted with cerebral palsy and/or brain damage and/or muscular dystrophy, is enrolled, with the approval of the Department of Public Instruction, as a pupil in any one of the schools or institutions for the blind or deaf, or cerebral palsied and/or brain damaged and/or muscular dystrophied, under the supervision of, subject to the review of or approved by the Department of Public Instruction, in accordance with standards and regulations promulgated by the Council of Basic Education, the school district in which such child is resident shall pay twenty-five per centum (25%) of the cost of tuition and maintenance,

> as determined by the Department. If the residence of such child in a particular school district cannot be determined, the Commonwealth shall pay, out of moneys appropriated to the department for special education, the whole cost of tuition and maintenance of any such child. In no event shall the total cost of tuition and maintenance of any such child exceed four thousand two hundred dollars ($4,200) per year. . . .
>
> (c) Cost of tuition and maintenance of certain exceptional children in approved institutions.—When any child between the ages of six (6) and twenty-one (21) years of age, resident in this Commonwealth, who is socially or emotionally disturbed, is enrolled with the approval of the Department of Public Instruction as a pupil in any approved day school under supervision of or approved by the Department of Public Instruction, the school district in which such child is resident shall pay twenty-five percent (25%) of the cost of tuition of such child in such school as determined by the Department of Public Instruction, and the Commonwealth shall pay out of funds appropriated to the department for special education seventy-five percent (75%) of the cost of tuition of such child as determined by the department: provided, however, that in no event shall the cost of tuition of such child exceed two thousand three hundred ten dollars ($2310) per school year. (PS Sec. 1376)

A fourth approach is to limit reimbursement to an amount not more than the cost of educating a similar child in a public school. New Jersey is an example of such an approach:

> Any board of education, jointure commission, state operated facility or private school which receives pupils from a sending district under this act shall determine a tuition rate to be paid by the sending board of education, but in no case shall the tuition rate in a nonpublic school exceed the maximum day class cost of education per pupil of children in similar special education classes in New Jersey public schools as determined according to a formula prescribed by the commissioner with the approval of the state board. (NJS 179-9)

Realizing that provision of public services in certain disability areas is more difficult than in others, some states provided non-public services in specific disability areas. This approach has been used in a number of states, although it is typified in the following Massachusetts law:

> The department may, upon the request of the parents or guardians and with the approval of the governor, send such emotionally disturbed children as it considers proper subjects for education to any school, hospital, sanitorium or like institution, within or without the commonwealth, affording remedial treatment of emotionally disturbed children for terms not exceeding twelve years, under regulations prescribed by the departments of education and mental health.
>
> The department may, upon like request and with like approval, continue for longer terms the education of any children therein who are meritorious pupils recommended by the principal or other chief administrative

> officer of such school, hospital, sanitorium or like institution. . . . (Sec. 71-411 Mass. Gen. Laws)

Many state laws require the state or local district to certify that the child has a handicapping condition and that an appropriate educational program is not available. The following law from Illinois is an example:

> . . . Nothing in this Section authorizes the reimbursement of a school district for the amount paid for tuition of a child attending a non-public school or special education facility unless the school district certifies to the Superintendent of Public Instruction that the special education program of that district is unable to meet the needs of that child because of his handicap and the Superintendent of Public Instruction finds that the school district is in substantial compliance with Section 14-4.01. (Sec. 14-7.02 Ill. Stats.)

Most states authorize the state education agency to set appropriate criteria regarding private schools. The following New York law is more specific than most states in this regard:

> The state education department shall maintain a register of such educational facilities which, after inspection, it deems qualified to meet the needs of such child in such educational facility. Such inspection shall also determine the eligibility of such educational facility to receive the funds hereinbefore specified. (Sec. 4407 N.Y. Stats.)

Some states have legislated special provisions to assume transportation costs for handicapped children in private schools. Illinois law, for example, says:

> If it otherwise qualifies, a school district is eligible for the transportation reimbursement under Section 14-13.01 and for the reimbursement of tuition payments under this Section whether the non-public school or special education facility, attended by a child who resides in that district and requires special educational services, is within or outside of the state of Illinois. However, a district is not eligible to claim transportation reimbursement under this section unless the district certifies to the Superintendent of Public Instruction that the district is unable to provide special educational services required by the child for the current school year. (Sec. 14-702 Ill. Stats.)

State laws vary on allowing tuition and other payments to private schools outside the state. Alabama prohibits such expenditures:

> No funds shall be expended for training in any school or institution outside of the state of Alabama. (Sec. 615 Ala. Stats.)

Delaware allows such expenditures:

> In any instance in which such an evaluation and placement committee certifies that a particular child cannot be adequately served in any of the units herein described for handicapped children, including the unit described by the term "learning disabilities" or where such a unit for learning disabilities is not available in the district of residence or a dis-

> trict within reasonable transportation distance of the home of the child, then the committee may recommend to the parents or legal guardian of such child and to the superintendent of the district that the child be authorized to attend a specialized public or private school in Delaware or in another state of the United States. . . . (Sec. 1703 DCA)

Recommendations

Ideally, public education should directly provide appropriate educational services for all children including the handicapped. Since this goal is not attainable in the immediate future and may never be attainable in some areas, private schools will continue to play an important role in the education of handicapped children. The major issues in this regard relate to the definition of public responsibility for handicapped children when they are educated in private schools as a matter of public policy.

As noted in Chapter 1, there is a growing number of judicial decisions which establish the principle of every child's right to a free public education. Thus it appears that the responsibility of all educational policy bodies is to develop, through the public system, the varied education programs needed by children. When it is impossible to develop some of these programs, it appears that such policy bodies still have the responsibility to provide alternative programs such as those in private schools. This does not excuse educational policy bodies from either the responsibility of developing the appropriate educational programs within the public system. While placement of a child in a private school as a matter of public policy may be a legitimate educational alternative, it also may be a discriminatory practice. As such, the responsible policy bodies, following the principles of *Loving v. Virginia* (388 US 1, 1967), must demonstrate a compelling cause for placement.

Therefore, it is recommended that: While education of all children is a public responsibility, the laws must recognize that education may take place in a variety of settings including private schools with public support. In order to guarantee that all handicapped children receive the education they need, and if public services are not available, public funds should assume the total educational and related costs of such children in appropriate private schools at no cost to the child or his or her parents or guardians. School districts placing handicapped children in private schools should annually assess the educational progress of the child in order to determine continued or alternative placement.

Ackerman and Weintraub (1971) found a tendency among school districts in states which pay the costs of private school education, to continue using private services, thus avoiding development of needed and feasible programs within the public schools. An example of the fiscal implications of such abuse is contained in Chapter 6. To remedy the situation and to assure that children receive the education they need, legal procedures need to be established to require the fiscal participation of local school districts in the costs of such private education. The child's school district of residence should be required to assume at least that sum that they would have to pay if the child were educated in the school district. Since the state would probably have to assume most of the costs, it should certify payment only upon receipt of just cause from the school district and evidence of that district's future plans for educating the child.

Therefore, it is recommended that: School districts placing children in private schools, because of their failure to provide appropriate public educational programs, should be required to assume a proportion of the costs of private education. This amount should be at least equal to the costs the district would contribute if children were educated within the public system. In addition, the school district should provide the state each year with just cause as to the necessity for such private education.

With the growing governmental financial support of handicapped children in private schools, many such schools are becoming quasi-public in nature. While data are not available, it is known that there are many such schools in which most of the budget is obtained from various governmental sources. Thus it would seem that these schools are no longer entitled to freedom from the standards required of public schools. It would also seem that if such standards are established for the public welfare, then they cannot be denied to a segment of the citizenry because of government failure to meet their needs in public settings.

Therefore, it is recommended that: All standards concerning education of handicapped children in public schools be required of private schools serving handicapped children placed in such schools by public policy. These include, but are not limited to, fire and safety codes, teacher certification, school attendance procedures, curriculum, and civil rights guaranties. Costs incurred by these private schools in complying with such standards should be included in approved tuition costs.

State education agencies should also establish teams of persons knowledgeable about the education of handicapped children and state standards to visit private schools. These teams should have authority to certify such schools as appropriate programs for educating the handicapped. A list of certified schools should be published and distributed to all school districts in the state.

In some cases such as in sparsely populated states, there may not be appropriate public or private educational services for children with certain disabilities. These primarily include very low incidence disabilities such as children who are both deaf and blind. It is hoped that these states will engage in multi-state planning to develop regional services. Some states may wish to use private schools in neighboring states for such purposes.

Therefore it is recommended that: State provisions be made to permit, in extraordinary circumstances, and finance the education of handicapped children in public or private schools located in other states.

Personnel

Background

The early development of education programs for handicapped children in the United States was characterized by an extreme shortage of trained personnel. Persons considered qualified during the first third of the 20th century were those with two years of college or normal school and an occasional summer course. Certification or a teaching license was generally conferred upon persons with two years of training, some special courses, and one or two years' experience with regular students.

Some of the deliberations of the 1930 White House Conference on Child Health and Protection focused on special education teachers and their qualifications. Ingram, reporting on the conference (unpublished manuscript, 1971), noted: "Although certain higher institutions were offering training, it is stated that the teacher training institutions of the country had arrived at no uniformity of opinion as to the extent and character of training, the course requirements, or the necessity of offering such special training."

The lack of agreement on this matter was a less severe problem than the extreme shortage of teacher training institutions offering programs in this area. As recently as 1948, there were only 77 colleges and universities that offered sequences of preparation of teachers of exceptional children. (Saettler, 1969)

As time passed and greater awareness of the educational needs of handicapped children occurred, the number of training programs increased. A study of the number of programs offered in 1961-62 (Mackie, Hunter, Neuber, 1961) indicated that 224 colleges and universities had a minimum sequence of teacher preparation in at least one area of exceptionality. According to Saettler (1969), this number had grown to 412 by 1968.

Despite these advances, there continues to be an acute shortage of trained personnel. Data taken from 1968-69 school year reports of Title VI of the Elementary and Secondary Education Act indicate a nationwide shortage of 275,000 teachers of handicapped children. As alarming as it appears, this figure does not include the shortage of the many support and administrative personnel also needed to operate effective special education programs. Clearly, there is a need for a minimum of 325,000 professional personnel to staff special education programs.

Recognizing the critical shortage of personnel, the Congress enacted P. L. 85-926 in 1958 to provide financial and technical resources to institutions of higher education and state education agencies in order to prepare professional personnel to teach the mentally retarded. The act authorized an appropriation of $1 million a year. Under this law, between 160 and 180 graduate fellowships in 19 higher educational institutions were offered. Congress passed P. L. 87-276 in 1961 to establish a similar grant-in-aid program for preparing teachers of the deaf.

Public Law 88-164, which expanded the provisions of previous legislation and significantly increased the authorization of funds, was passed in 1963. Even with these gains, James J. Gallagher, when he was associate commissioner for education of the handicapped in the U. S. Office of Education, noted that although the law involved 177 institutions of higher learning and 53 state and territorial education agencies, considerable shortages still remained. It should be noted that these funds were not limited to graduate fellowships but were also made available at the junior and senior level in the form of undergraduate traineeships. Additionally, these funds were often used by state departments of education and universities to provide summer institutes or 12-month programs for persons already working in the field. Table 2 indicates the number, distribution pattern, and cost of the fulltime study awards under this program.

Table 2:

BUREAU OF EDUCATION FOR THE HANDICAPPED, O.E.
FULLTIME STUDY AWARDS—P.L. 88-164

FY	JR	SR	MA	PMA	Higher Inst.	State Agen.	Total Amount
1964		398	457	84	108	50	4,570,600
1965		562	468	89	153	50	5,142,400
1966		829	664	119	162	52	7,368,150
1967		840	662	133	177	53	7,555,500
1968	390	883	622	137	177	53	6,841,300

(*PCMR Message,* July 1969)

As public demand for more and better programs gained momentum, special education personnel in the classrooms and students in training programs became differentiated according to their interests in specific categorical disabilities. Certification procedures paralleled this differentiation, with teachers obtaining state certification in a certain disability area such as mental retardation or learning disabilities.

The rationale was based on the pattern of grouping handicapped children on the basis of their disability. This movement in teacher education complemented the disability-by-disability growth of programs throughout the country. For example, in the 1950's parents of retarded children began operating programs and, after serving as staff themselves, urged development of teacher training programs for the mentally retarded.

In line with the movement to keep handicapped children in a normal education setting as much as possible, there is a trend to provide "core training" for special education personnel. The rationale underlying this approach is that tomorrow's special education teachers and administrators must possess specific skills to assess and help meet each child's learning needs. The philosophy is to individualize instruction to meet the child at his level of need and to provide him with "mainstream" educational opportunities whenever possible.

While special education teachers and support personnel must be trained to work with the handicapped, there is also need for the nation's regular teachers to identify the handicapped in their classrooms as well as to effectively teach those who remain in the normal classes. In recognition of these trends, the Education Professions Development Act (P.L. 90-35) earmarks, through an agreement by the Bureau of Education for the Handicapped and the Bureau of Educational Personnel Development, about 15 percent of the total appropriations to be spent in the area of supporting the training of special education personel.

Since most handicapped children remain in regular classrooms, the P.L. 90-35 program stresses the training and retraining of regular classroom teachers to understand and respond to the needs of these children. Five areas of education of the handicapped have priority under the EPDA program:

> preparation of auxiliary personnel for special education, including teacher aides, diagnostic teachers, special education counselors, and supervisors,
>
> expanding the competencies of general educators in university and college training programs and in the field to include the instruction of educationally exceptional children,
>
> expanding the competencies of special educators to facilitate individualization of instruction as opposed to categorical instruction,
>
> preparation of personnel for special education in disadvantaged areas, and
>
> preparation of personnel for preschool special education programs."

Despite the success in closing some of the personnel gaps, there remain vast unmet needs. At 1968 regional conferences on long range, cooperative planning sponsored by the Bureau of Education for the Handicapped, the training of personnel was ". . . possibly the most frequently named problem area and often engendered the most heat and emotions in the discussion. . . ." (Conference Summary, 1968). In May 1969, the National Advisory Committee on Handicapped Children also expressed grave concern over the problem of manpower needs. The committee characterized the need for trained personnel as ". . . perhaps the single most vital factor in determining whether programs for handicapped children will have the quality that is universally denied." (Interim Emergency Report of the NACHC, 1969)

Traditionally, education of the handicapped has involved the use of personnel in addition to the teacher. A partial list of such persons includes speech, physical, and occupational therapists, psychologists, instructional materials specialists, and administrators. In addition, there is a tremendous need for para-professional personnel. While many have played minor roles in classroom activity, they are increasingly needed to serve as teaching assistants, working with entire classes, smaller groups, or individual children.

According to reports by the National Education Association (*New York Times,* July 28, 1971), there exists an oversupply of teachers for the nation's classrooms. While many of these reports point out that the oversupply does not pertain to vocational teachers or special educators, little planning has been done to funnel this apparent excess of personnel into work with handicapped children. With proper recruitment programs, many of these trained teachers, with minimal additional preparation, could effectively work with handicapped children.

Status

Because of the great need for teachers and the recognition that incentives are effective devices, about 25 percent of the states have passed legislation providing for financial assistance for persons who are training to work in education of the handicapped. The majority of these laws provide financial assistance for parttime or fulltime study. In many cases, parttime study provisions apply to teachers seeking to complete certification requirements. An example of this type of law is the following from Florida:

> The Department of Education is authorized to make training grants to teachers who seek special training in exceptional children education to qualify said teachers to meet professional requirements and should be responsible for the administration of said program. (Sec. 239.371 Fla. Stats.)

While Florida aid is not confined to students training in a particular disability area, some states have developed statutes to relieve shortages in certain areas. Massachusetts, for example, provides annual special education scholarships up to $300 for undergraduate students who pursue certification as teachers of the mentally retarded.

Georgia law does not specify a particular disability but does include provision for parttime or fulltime study. The grants are to be made "to persons interested in working in programs for the education of exceptional children . . . [and] to qualify them as professional workers in special education." (HB 453 Acts of 1967)

Oregon and Maine provide assistance with unique operating machinery. In Maine, the state has the responsibility for providing for education of all professional personnel studying to teach handicapped children. The state provides courses of instruction through the higher education system, and shares the costs of a training program sponsored by a local education agency. (RSM Sec. 3161) In Oregon, scholarships can be awarded to teachers pursuing certification to work with the mentally retarded if:

> (a) The district school board of the district by which the teacher is employed or is to be employed for the next succeeding school year agrees to pay the teacher $200 to match the $200 paid by the state as part of the scholarship;
>
> (b) The teacher applying for the scholarship agrees in writing to complete the course and to teach in the school district that provides the matching funds for one year after receiving his teaching certificate to teach mentally retarded children. (ORS 343.544)

Similar comprehensive assistance laws exist in Michigan and Illinois. In Illinois, for example:

> The Superintendent of Public Instruction with the advice of the Advisory Council may make traineeship or fellowship grants available to persons interested in working in programs for the education of handicapped children for either part-time or full-time study in programs designed to qualify them to become professional workers. In order to quality for a traineeship a person must have earned at least sixty semester hours of college credit and persons to qualify for a fellowship must be graduates of a recognized college or university. No more than 200 such grants will be given in any academic year and may not be in amounts exceeding $1500 per academic year for traineeships and $3000 for fellowships, except in addition an additional amount may be allowed to any approved institution of higher learning in Illinois for tuition and fees. Part-time students and summer session students may be awarded grants on a prorata basis.
>
> The Superintendent of Public Instruction may contract with any approved institution of higher learning in Illinois to offer courses required for the professional training of special education personnel and may reimburse the institutions of higher learning for any financial loss incurred due to low enrollments, distance from campus, or other good and substantial reasons satisfactory to the Advisory Council.
>
> Following the completion of an academic program after receipt of a traineeship or fellowship, grantees are expected to obtain within one year employment in an approved special education program in Illinois. They must continue such employment for one half year for each year of their traineeship or fellowship. If they do not fulfill this requirement they may be required to remit to the state all or part of their grant. (Sec. 14-10.01 Ill. Stats.)

Despite the tremendous need for personnel, only Georgia provides for recruitment. Funds for this program, however, are only available if not spent on the first priority, the awarding of scholarship grants.

Recommendations

The insufficient number of qualified persons to teach handicapped children still remains one of the major roadblocks to providing these children with an appropriate education. Despite the fact that the numbers are growing, the demand for services far exceeds available personnel. As a result, school districts have been forced to utilize untrained persons. In most cases states have temporarily waived certification requirements to allow this to occur.

This situation is not true in all instances. In some disability areas such as the deaf, the blind, and the physically handicapped, the teacher shortage is less severe than in the larger disability groupings such as mental retardation, emotional disturbance, and learning disabilities. Demography also appears to control variance in available personnel. Ackerman and Weintraub (1971) note that in six states surveyed, suburban and resort areas had little difficulty in attracting qualified personnel and often had many more applications than positions. In urban centers, the situation varied depending upon their location and hiring practices. Almost all rural districts sampled had personnel shortages.

To combat the problem in rural areas, school districts have often hired regular classroom teachers to teach the handicapped. To become certified, these teachers often have taken courses at local colleges or universities. However, Ackerman and Weintraub (1971) point out that rural districts have been hesitant to encourage teachers to do this, since they often get their training and go elsewhere. This situation has resulted in the massive growth of workshops and other inservice training activities sponsored by state and local education agencies.

While little legal base exists for programs to encourage persons to enter this field, national, state, local, lay, and professional organizations and some state education agencies have done some public relations in this regard. The present teacher surplus affords a great potential supply of personnel if concerted recruiting and training efforts are quickly undertaken.

It is unjust to deny a child schooling, because of the nation's failure to train sufficient qualified personnel. And it is as unjust to staff programs with unqualified personnel. While this dilemma can be partially resolved through massive recruitment and training programs, attention should also be given to new patterns of staffing programs, especially the use of nonprofessional personnel to complement the services of the professional.

Therefore it is recommended that: States undertake the development and support of programs to recruit and train personnel needed to enable handicapped children to be educated. Such programs should encompass the wide variety of personnel required and should be conducted on a fulltime, parttime, and inservice basis.

Facilities

Background

Throughout the development of special education in the U.S., the absence of suitable facilities has been a key factor inhibiting provision of appropriate educational services to handicapped children.

In May, 1968, the U.S. Office of Education released a study, "Projections of Public School Facility Needs," which indicated that for the academic year 1967-68 100,000 more classrooms were needed to educate the handicapped. This figure represented 20 percent of the total number of facilities needed for all of education, although the handicapped represent only about 10 percent of the total school age population.

The nature of the problem can be seen in three distinct areas: physical inaccessibility to some schools for handicapped children; the impact of inappropriate facilities on their learning abilities; and the absence of legal, administrative, and financial bases to relieve these problems.

Historically, space has been made available for education of the handicapped on the basis of the "principle of succession." Developed by urban sociologists, this principle states that the newest group of persons to arrive—regardless of ethnic origin, religious beliefs, or racial heritage—occupies the least valued and usually the least desirable environment. In many cases, the space initially made available to the handicapped included abandoned or archaic buildings, basements, renovated offices or custodial quarters, and garages. Similar common settings for programs for the handicapped have been church basements, Quonset huts, warehouses, and other equally unsuitable locations.

Since none of these facilities were originally designed to house education programs for the handicapped, they posed tremendous physical barriers for the children. For example, numerous special education programs were conducted in school basements which were built to serve as storage areas. Since access to the basement is by stairs, some children had to be carried by adults. In addition, such facilities seriously endangered the safety of the children, especially during emergencies when there is rarely sufficient personnel to help the children evacuate the building. The presence of safety hazards such as exposed water pipes and radiators as well as the frequent failure to meet even minimum standards of health and personal comfort was a fact of life in many early special education programs.

In addition, because many of the buildings were to be torn down when newer schools were completed, they were often in excessive disrepair and structurally unsafe.

Many other early programs were assigned to separate buildings or isolated locations in regular education buildings. There, neither the children nor the teacher could interact with the regular students and faculty. Countless stories are told by teachers who were unable to use the faculty room, cafeteria, or lavatory because of the inconvenient location of the special education classroom.

Additional inadequacies included improper heating and cooling, inferior lighting and storage, and lack of chalkboards, display areas, and other features.

Unfortunately, many of the substandard conditions still exist today. Then, as now, the tragic consequence is that handicapped children who frequently need better lighting, acoustically treated rooms, distraction free areas, and other environmental alterations are further handicapped and discouraged from learning.

In recent years, special educators have seen a gradual improvement in the facilities provided for their expanding programs. More and more, programs are being moved out of storage closets and school basements into classrooms designed for normal children. While this integrates handicapped children into the regular school life and greatly improves the learning environment, unfortunately these rooms do not include necessary modifications for the handicapped. For example, a classroom with space for 30 children may be overstimulating to a class of eight emotionally disturbed children, who require a more subdued environment. Similarly, the basic shape of the regular classroom may make it difficult to create many of the special purpose areas needed for effective instruction of handicapped children.

While exclusive assignment of facilities for programs for the handicapped has been traditional, it has been only within the past 25 years that they were designed and constructed for that purpose. Thus today in schools for the hearing handicapped, flashing emergency lights accompany the standard bell to signal fire alarms. Home living suites or apartments are often included in buildings to help the trainable mentally retarded to learn basic housecleaning, cooking, and home repair skills. Special areas are often set aside for various therapies, counseling activities, vocational evaluation and occupational training. Since it is desirable to heighten interaction between regular and handicapped students, many of the schools for the handicapped are being constructed on sites adjoining regular public schools.

In keeping with the growing professional move to maintain as many handicapped children as possible in the regular classrooms, some schools require their architects and educational facility planners to assure the buildings are usable by the handicapped. Added impetus came as the result of action by various groups to eliminate architectural barriers in all new buildings. These groups, working with the American National Standards Institute, developed a set of specifications which, when applied, would remove major physical barriers to the handicapped from buildings and then attempted to achieve legal implementation at the state and federal levels.

Their efforts resulted in passage by the U.S. Congress of Public Law 90-480: "An act to insure that certain buildings financed with federal funds are so designed and constructed as to be accessible to the physically handicapped." To date, 48 states have established administrative provisions for elimination of barriers from public buildings (President's Committee on Employment of the Handicapped, 1971).

Architectural and Funding Problems

There are three other problems which have influenced trends in facilities for the education of handicapped children. First, there has been little information and experience to guide architects and facility planners which has meant construction of facilities with numerous inadequacies. Further complications include building and health codes which impose severe limitations on developing environmental solutions relating to the educational problems of these children. One example is fire codes which specify that fire resistant doors must be of certain material and weight. Often doors designed to these specifications are too heavy for children in wheelchairs to open.

A related problem is codes or requirements of state education departments that specify shapes of buildings, square footage allotments, basic furnishings and equipment, and other items which limit some creative uses of facilities to serve handicapped children.

Finally, lack of adequate funds to construct or modify buildings for handicapped children present many obstacles. Since state aid can be obtained only by adherence to building requirements for all educational facilities, many school officials determine it is too expensive to provide facilities needed by children who are fewer in number than those placed in a normal setting. In addition there is the opinion shared by many general school administrators that special education for the handicapped is an educational "extra" to be provided only after "basic" educational needs are met. In times of fiscal constraint, this results in elimination of the "extras" from the district's building plans. Further discussion of related fiscal problems is discussed in Chapter 6.

In recent years, progress has been made. Many of the totally inadequate buildings that served as the starting point for special education programs have been vacated, and sometimes, destroyed. School districts have moved classes for the handicapped from remote buildings and basements to a special classroom or resource room in the regular school, or to a special wing attached to the regular building. Many districts are constructing special buildings for severely handicapped children such as the trainable mentally retarded and physically handicapped. There is also movement to relocate the deaf and blind in regular schools as much as possible.

Unfortunately, church basements, storage rooms, and vacated facilities are the educational homes for too many handicapped children today. Rossmiller, et al. (1970) report after comprehensive site visits to 24 special education programs in five states:

> In some instances we observed new facilities designed specifically for the educational program they housed, and, in the same district, we also observed programs which were housed in sub-standard classrooms or modified storage rooms.

Evidence exists that many of the better facilities possess serious inadequacies. Analysis of over 1,000 questionnaires, part of a 1967-69 study of physical environment and special education conducted by The Council for Exceptional Children (Abeson and Blacklow, 1971), revealed that over 20 percent of those teachers surveyed taught in classrooms which were too small, had inappropriate furniture, insufficient chalkboards, inadequate storage, inefficient heating and cooling, and extraneous noise. Thus, even though knowledge is accumulating about more effective design of facilities, implementation of this knowledge in newly developed buildings is sorely lacking.

Status

To a significant degree, the lack of awareness of the need for facilities designed for the handicapped is reflected in state laws. In the laws of many states, facilities for special education are not even mentioned. In others, facilities are mentioned in connection with definitions of special education services, administration, or other collective category. Under the category "special facilities," Hawaii includes "buildings, equipment and materials . . . for exceptional children" (HRL Sec. 43-20) while Alaska includes "facilities" under the category, "special services." (Sec. 14.30.351 Alas. Stats.)

It is likely that in many of these states there are rules and regulations which require that minimum standards be met and facilities used to educate the handicapped. For example, Colorado law specifically charges the state board with prescribing the minimal physical facilities required for special education programs. (Sec. 123-22-6 CRS)

Other laws recognize that facilities for handicapped children are not readily available and that special provisions may be required. In Nevada, the law provides that boards of school trustees may purchase sites and buildings for special education in the same manner as other school sites and buildings. There is also a provision that they may also rent suitable property for an economical fee without being so directed by a vote of the district. (RSN Sec. 388.500)

In many states the creation of multiple district agencies to provide special education services has necessitated special provisions for property ownership. In New York, for example, the Board of Cooperative Educational Services (BOCES) was established several years ago without the right to own property. This produced administrative problems because the agency was required to rent property from the cooperating districts for classroom and administrative use. Newer laws creating cooperative agencies as well as amendments to the original BOCES law now allow ownership of property. The following Illinois law is a good example of such a provision:

> To enter into joint agreements with other school boards to acquire, build, establish and maintain sites and buildings that may be needed for area vocational education buildings or the education of one or more of the types of handicapped children defined in Sections 14-1.02 through 14-1.07 of this Act, who are residents of such joint agreement area, upon the approval of the Advisory Council on Education of Handicapped Children and the Superintendent of Public Instruction. Such sites may be acquired and buildings built at any place within the area embraced by such joint agreement. (Sec. 10-22.31b Ill. Stats.)

A Connecticut law provides essentially the same benefits but requires that there be a "long-term regional plan":

> Sec. 10-76e. State grants for cooperative regional special education facilities. Any school district which agrees to provide special education as part of a long-term regional plan approved by the state board of education, for children requiring special education who reside in other school districts, shall be eligible to receive a grant in an amount equal to the net cost to such district of providing, constructing, or reconstructing and equipping appropriate facilities to be used exclusively for children requiring special education, provided such facilities shall be approved by the state board of education and shall be an adjunct to or connected with facilities for children in the regular school program, except when the state board of education determines that separate facilities would be of greater benefit to the children participating in the long-term special education program. Such grants shall be in addition to any grant received pursuant to section 10-286. Application for grants under this Section shall be made to the state board of education at such time and in such manner as said board may prescribe. Said board may make such a grant in an amount equal to one hundred percent of the cost of the facilities less any other public or private grants for such purposes. Upon certification of completion of the building project by the secretary, the comptroller shall pay the sum granted to the town or regional school district in a lump sum. (Sec. 10-76e Conn. Stats.)

Some states have provisions for state construction of residential facilities in conjunction with educational programs for the handicapped. An example is the following California provision:

> The county board of education in any county required to provide for the education and training of handicapped persons residing in the county, when in its judgment necessity therefor exists, may construct and maintain dormitories for use and occupancy by such persons, and shall fix the rates to be charged such persons, or parents or guardians of such persons, for quarters in the dormitories. (Ch. 1214 Sec. 665 Cal. Stats.)

States have given minimum attention to providing special financial assistance for the construction or modification of these facilities. Florida appropriated $2.5 million for fiscal year 1968-69, ". . . to be distributed to individual districts for capital outlay purposes for critical facility needs for exceptional children. . . ." (Sec. 3 CH. 68-23 Laws of Florida) These funds were provided as an addition to the established state capital outlay funds for public school buildings.

The 1969 Florida legislature provided additional funds to continue this program. The response was significant with 29 applications for facilities submitted.

Some states have laws on facilities which are aimed at children with specific disabilities. This happens frequently in those states whose legislatures directly appropriate money for the operation and capital expansion of state institutions.

As an example, the following Massachusetts law provides for a specific disability and clearly encourages new programs in non-institutional settings:

> Any city, town or regional school district in which an application for a grant for the construction of a school for the deaf or an addition to an existing school for the deaf is approved by the board of education shall receive a construction grant equal to sixty-five percent of the approved cost of construction notwithstanding any provision of Chapter six hundred and forty-five of the Acts of nineteen hundred and forty-eight as amended to the contrary. (Sec. 28B Mass. General Laws)

In Arizona, a law has been enacted which is also directed at reducing the isolation of handicapped children by requiring that "the special education program . . . shall be conducted only in a school facility which houses regular education classes or in other facilities approved by the state division of special education." (Sec. 15-1015 ARSA)

The most common state provisions on facilities for the handicapped are called architectural barrier laws. Their purpose is to eliminate all types of architectural barriers from buildings including schools which are constructed with public funds. A typical law is the following from Hawaii which provides for the application of

> The American Standards Specifications for Making Building Facilities Accessible to and Usable by the Physically Handicapped to the construc-

tion of public buildings and facilities, thereby providing that such buildings and facilities will be accessible to and usable by the physically handicapped insofar as feasible. Applies to buildings and facilities constructed by the State or its subdivisions. (HSCR 388; SSCR 370)

Recommendations

There is a desperate need within the nation's school districts for appropriate facilities to educate handicapped children. While more and more space is being provided, it is in many cases inappropriately designed and poorly located. Consequently, there is need for state law to foster and guide the development of such facilities.

The most common excuse used by school officials for this condition is insufficient funds. While it is true that few states have special laws authorizing such special funds, most school officials have been able to meet the physical space needs of normal children.

While there can be no argument that special financial assistance has resulted in special education facilities, these funds are often directed to the creation of buildings for exclusive use by the handicapped. This trend is not harmonious with effective educational programing, which seeks to place handicapped children in a normal educational settings as much as possible.

Therefore, it is recommended that: Local education agencies should be required to include in their education plans for the handicapped evidence that suitable facilities will be provided. It should also be required that the location, design, and equipment of such facilities shall meet the special learning and physical needs of the children to be located in such facilities.

It is further recommended that: The plans for all school building projects that are intended for or are likely to be used by handicapped children be reviewed in the following manner by the state education agency. First, a statement of the objectives of the educational program to be carried forth in the facility should be developed and submitted to the state director of education of the handicapped for approval. Second, the state director of education of the handicapped and the state education agency official responsible for school planning and construction should assess the relationship between the education program and the planned facilities prior to the granting of state approval or financial support.

Many states also need to examine their standards for schools to permit better design for the handicapped. Clearly, standard formulas for square footage allotments, window placements, door construction, etc. need to be examined and replaced or modified by more flexible standards which relate to the educational program.

Therefore we recommend: That provision be made to permit the waiver of certain codes relating to school construction when codes impede the construction of appropriate facilities for handicapped children. Such *waivers should only be granted upon the presentation of sufficient evidence of need and evidence that such waiver will not jeopardize the health or safety of such children or those to be employed by the school.*

Although many states have architectural barriers legislation, it is often vague and weak, which leads to limited compliance. Evidence of inaction and general awareness was collected by the CEC Analytic Study of State Legislation. (Ackerman & Weintraub, 1971) During the study, intensive interviews with both general and special education administrators occurred in the school districts of six states. It was found that although five of the six states had either legislative or administrative direction to eliminate architectural barriers in buildings under construction, only one district had taken steps to conform. More significant, however, is the study finding that "most local administrators, both in general education and special education, were not aware that legislation of this nature existed in their state and indicated that little attention if any was provided to this problem."

Therefore it is recommended that: State education agencies establish policies and administrative procedures to assure that all school construction in the state comply with the state architectural barriers laws and/or regulations.

Model Statutes

Every state has a comprehensive school law. It covers the organization and functions of the one or more state education agencies, qualifications for teachers and other school professionals, state-local relations, local public school systems, the role of private schools, and compulsory school attendance.

For normal children, the regular school law is a sufficient and generally all-inclusive legal basis for the free public education they receive or a prescription of the conditions under which they may substitute private schooling.

For the handicapped, supplementary provisions are necessary. Children who have many kinds of physical, mental, emotional, or learning impairments frequently can function in the regular public school setting only if certain aids and auxiliary services designed to ameliorate or overcome the impediments imposed by their handicaps are supplied. In other instances, special environments are needed to enable the handicapped to secure the equivalent of what most children receive entirely from the regular programs or, where this is impracticable, to receive education suited to their conditions and needs. Laws in every state related to special education provide the basis on which the handicapped gain access to the free public education, which is the responsibility of the state to provide.

The following pages contain a comprehensive set of model statutory provisions designed to provide a full legal basis for practicable and effective programs of education for handicapped children. The intention is that they should be considered by states wishing to revise or update their laws relating to the education of the handicapped. Since this group of children is part of the population to which the comprehensive state school law applies and should continue to apply, the models are designed for incorporation into that law.

States considering a major overhaul of their education statutes may wish to regard the models taken in their entirety as a complete set of provisions relating to special education for the handicapped. Other states may wish to consider some of the individual provisions for addition to the existing statutes or as substitutions for particular provisions needing improvement.

The materials are presented in a number of distinct parts. The first of them is brief and applies to all children. It is a compulsory school attendance law in two short sections. It is included because one of the most serious problems in attempting to secure education for the handicapped is the tendency to excuse children with special problems from the requirements of regular school attendance. Statutes which condone or provide for such a course signal a failure of the public educational system to reach large groups of children for which it is intended. In many cases, they also contravene statutory or constitutional provisions which purport to afford education for all.

The other parts are arranged as a title of a comprehensive state school law. This title relates to special education for the handicapped. It does not replace the regular school law but is a supplement to it.

Brackets [ ] are used to set off alternative language or to indicate areas for insertion of appropriate existing state law or policy.

MODEL COMPULSORY SCHOOL ATTENDANCE LAW

Section 1.

School Attendance and Instruction Required

All children between the ages of [ ] and [ ] shall attend the public schools, or such other schools as may be approved by the [state education agency] for the purposes of satisfying compulsory school attendance requirements, and shall receive instruction therein.

Section 2.

Programs of Instruction

(a) No child shall be exempt from the requirements of Section 1 hereof, nor shall the authorities legally charged with responsibility for the education of children be relieved from the obligation to provide suitable instruction. The public school authorities shall provide such special programs of education, corrective and related services as may be appropriate to enable all children of the following classes to meet the requirements of Section 1 of this Act:

1. Children who are unable to benefit sufficiently from the regular programs of instruction by reason of their mental, physical, emotional or learning problems, or for any other reason.

2. Children whose degree or kind of disability or illness precludes attendance in a regular school setting.

(b) A child shall be deemed to be of the type described in subsection (a) hereof only upon certification pursuant to rules and regulations of the [state education agency] that he is suffering from physical or mental illness or disease of such severity as to make his presence in a school facility or his travel to and from such facility impossible or dangerous to his health or the health of others. For such children, home, hospital, institutional or other regularly scheduled and suitable instruction meeting standards of the [state education agency] shall be provided by the public schools.

TITLE_______
EDUCATION OF THE HANDICAPPED

Part I. Policy

Section 100.
Provision and Implementation

It is the policy of this state to provide, and to require school districts to provide, as an integral part of free public education, special education sufficient to meet the needs and maximize the capabilities of handicapped children. The timely implementation of this policy to the end that all handicapped children actually receive the special education necessary to their proper development is declared to be an integral part of the policy of this state. This section applies to all handicapped children regardless of the schools, institutions, or programs by which such children are served.

Section 101.
Services Mandatory

The [state education agency] shall provide or cause to be provided by school districts all regular and special education, corrective and supporting services required by handicapped children to the end that they shall receive the benefits of a free public education appropriate to their needs. It shall be within the jurisdiction of the [state education agency] to organize and to supervise schools and classes according to the regulations and standards established for the conduct of schools and classes of the public school system in the state in all institutions wholly or partly supported by the state which are not supervised by public school authorities. Schools and classes so established in wholly state owned institutions shall be financed by the [state education agency].

Section 102.
Preference for Regular Programs

To the maximum extent practicable, handicapped children shall be educated along with children who do not have handicaps and shall attend regular classes. Impediments to learning and to the normal functioning of handicapped children in the regular school environment shall be overcome by the provision of special aids and services rather than by separate schooling for the handicapped. Special classes, separate schooling or other removal of handicapped children from the regular educational environment, shall occur only when, and to the extent that the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily.

Section 103.

Facilities

Physical aspects and specifications of schools, classrooms and other facilities for, or likely to be used by handicapped children, shall be related to their special physical, educational and psychological needs. To this end, school districts, [Special Education Services Associations], agencies of the state and its subdivisions, and any private persons or entities constructing, renovating or repairing facilities with or aided by public funds, which facilities are expressly intended for or are likely to be used by handicapped children, shall plan, locate, design, construct, equip, and maintain them with due regard for the special capabilities, handicaps and requirements of the handicapped children to be accommodated therein.

Section 104.

Responsibilities

It is the responsibility of local governments and school districts to expend effort on behalf of the education of each handicapped child equal to the effort expended on account of the education of each child who does not have a handicap. Any additional effort necessary to provide supplemental aids and services shall be the ultimate responsibility of the state but shall, to the maximum extent practicable, be administered through the local school districts.

Section 105.

Private Programs

The responsibility of local governments, school districts, and the state, to provide a free public education for handicapped children is not diminished by the availability of private schools and services. Whenever such schools and services are utilized, it continues to be the public responsibility to assure an appropriate quantity and quality of instructional and related services, and the protection of all other rights, and to ascertain that all handicapped children receive the educational and related services and rights to which the laws of this state entitle them.

Part II. Definitions

Section 200.

Definitions

As used in this Title:

(a) "Handicapped child" means a natural person between birth and the age of twenty-one, who because of mental, physical, emotional or learning problems requires special education services.

(b) "Special education" means classroom, home, hospital, institutional or other instruction to meet the needs of handicapped children, transportation and corrective and supporting services required to assist handicapped children in taking advantage of, or responding to, educational programs and opportunities.

(c) "School district" means either a school district or a political subdivision operating a public school or public school system.

(d) "Special education facility" means a school or any portion thereof, remedial or supplemental facility or any other building or structure or part thereof intended for use in meeting the educational, corrective, and related needs of handicapped children.

Part III. State and Local Responsibilities

Section 300.

Establishment of Division

There is hereby established in the [State Education Agency] a Division for the Education of the Handicapped. The Division shall be headed by a Director who shall be qualified by education, training, and experience to take responsibility for, and give direction to, the programs of the [State Education Agency] relating to the handicapped.

Section 301.

Advisory Council

(a) There shall be an Advisory Council for the Education of the Handicapped which shall advise and consult with the [head of the state education agency] and the Director of the Division for the Education of the Handicapped, and which shall engage in such other activities as are hereinafter set forth. The Advisory Council shall be composed of [9] members who are not officers or employees of State agencies and no more than [4] of whom may be officers or employees of local school districts. The [head of the state education agency] shall appoint the members of the Advisory Council for [3] year terms, except that of those first appointed, [3] shall be appointed for terms of one year, [3] for terms of two years and [3] for terms of three years. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

(b) The Advisory Council shall be composed of persons broadly representative of community organizations interested in the handicapped, professions related to the educational needs of the handicapped, and the general public.

(c) The Advisory Council annually shall elect its own chairman and vice chairman. The director of the Division for the Education of the Handicapped shall meet with and act as secretary to the

Advisory Council and, within available personnel and appropriations, shall furnish meeting facilities and staff services for the Advisory Council. The [state education agency] shall regularly submit, as part of its budget requests, an item or items sufficient to cover expenses of the operation of the Advisory Council and of its members in connection with their attendance at meetings of the Advisory Council, and other Advisory Council activities.

(d) The Council shall:

1. Have an opportunity to comment on rules and regulations proposed for issuance pursuant to this Title.
2. Consider any problems presented to it by the [head of the state education agency] or the Director of the Division for the Education of the Handicapped, and give advice thereon.
3. Review the State Plan prepared pursuant to Section 400 of this Title prior to its submission to the governor and legislature and comment thereon to the [head of the state education agency] and the Director of the Division for the Education of the Handicapped.
4. Make an annual report to the governor and legislature, and [the state board of education] which report shall be available to the general public and shall present its views of the progress or lack thereof made in special education by the state, its agencies and institutions, and its school districts during the preceding year.

(e) Funds for the publication of the report referred to in subsection (d) of this Section shall be made available from the regular appropriations to the [state education agency].

Section 302.

Special Education Services Association

A school district may meet its obligations to provide education, corrective, and supporting services for handicapped children, as set forth in this Title, and in any other laws and regulations of the [state education agency], by participating in a Special Education Services Association established and operated pursuant to this Title.

A Special Education Services Association may be the means whereby participating school districts perform all of their special education functions or perform only specified special education functions. In the latter case, participating school districts shall continue to provide special education and related services not provided by such an Association on an individual district basis or in some other manner pursuant to law.

Section 303.

Area and Manner of Establishment

A Special Education Services Association shall provide services for all the area included within the school districts participating in it.

It may be established by [resolution of each of the governing boards of the school districts participating in it] [by vote of the electors in each of the participating school districts in the same manner as a school bond referendum].

Section 304.

Governing Board

The Governing Board of a Special Education Services Association shall consist of representatives of the participating school districts. Unless otherwise provided in a written agreement embodied in the resolutions or propositions by which the Special Education Services Association is established, each participating school district shall have one representative. The representatives of each school district on the Governing Board shall be [elected by the governing board of the school district from its own members] [elected by the voters of the school district]. Each such representative shall have one vote on the Governing Board.

Section 305.

Powers of Governing Board

The affairs of a Special Education Services Association shall be administered by its Governing Board, and the officers and employees thereof. A Special Education Services Association shall have power to:

(a) Establish and operate programs and classes for the education of handicapped children.

(b) Acquire, construct, maintain and operate facilities in which to provide education, corrective services, and supporting services for handicapped children.

(c) Make arrangements with school districts participating in the Special Education Services Association for the provision of special education, corrective, and supporting services, to the handicapped children of such school districts.

(d) Employ special education teachers and personnel required to furnish corrective or supporting services to handicapped children.

(e) Acquire, hold and convey real and personal property.

(f) Provide transportation for handicapped children in connection with any of its programs, classes or services.

(g) Receive, administer and expend funds appropriated for its use.

(h) Receive, administer and expend the proceeds of any issue of school bonds or other bonds intended wholly or partly for its benefit.

(i) Apply for, accept, and utilize grants, gifts, or other assistance, and, if not contrary to law, comply with the conditions, if any, attached thereto.

(j) Participate in, and make its employees eligible to participate in, any retirement system, group insurance system, or other program of employee benefits, on the same terms as govern school districts and their employees.

(k) Do such other things as are necessary and incidental to the execution of any of the foregoing powers, and of any other powers conferred upon Special Education Services Associations elsewhere in this Title or in other laws of this state.

Section 306.

Special Education Centers

(a) A Special Education Services Association may establish and operate one or more special education centers to provide diagnostic, therapeutic, corrective, and other services, on a more comprehensive, expert, economic and efficient basis than can reasonably be provided by a single school district. Such services may be provided in the regular schools by personnel and equipment of a center or, whenever it is impractical or inefficient to provide them on the premises of a regular school, the center may provide services in its own facilities. To the maximum extent feasible, such centers shall be established at, in conjunction with, or in close proximity to one or more elementary and secondary schools.

(b) Centers established pursuant to this Section also may contain classrooms and other educational facilities and equipment to supplement instruction and other services furnished to handicapped children in the regular schools, and to provide separate instruction to children whose degree or kind of handicap makes it impracticable or inappropriate for them to participate in classes with normal children.

(c) Centers established pursuant to this Section may include dormitory and related facilities and services in order to permit handicapped children who may not reasonably go to and from home daily to receive educational and related services.

(d) No facilities may be acquired or constructed pursuant to this Section unless application therefor has been made by the Special Education Services Association to the Division of Education for the Handicapped and a permit for such facilities has been issued by the Division. The permit may contain such conditions as the Division may deem appropriate to assure conformity with the policy of this Title. No permit shall be issued unless the Division of Education for the Handicapped is satisfied that every effort has been and is being made to accommodate the educational or related services in regular school buildings or on regular school premises, and, that separate facilities are necessary.

Section 307.

Relation to School Districts

(a) A Special Education Services Association shall provide education, corrective and supporting services for all handicapped children who are residents thereof, except for special education, corrective, and supporting services that are provided directly by the state, and any special education, corrective, and supportive services as, pursuant to the agreement under which the Association functions, are expressly reserved for continued provision by the individual school districts. To the maximum extent practicable, a Special Education Services Association shall make such provision in the regular schools of the school districts served by the Special Education Services Association or in its own facilities established and operated pursuant to Section 305 of this Title. A Special Education Services Association shall make arrangements with, and payments to, private schools, institutions, and agencies, for services to handicapped children only if it is unable to provide satisfactory service with its own facilities and personnel, and the facilities and personnel of its member school districts.

(b) A Special Education Services Association shall provide home or hospital instruction, corrective, and supporting services to handicapped children, but only in cases where the nature and severity of the handicap make the provision thereof in the regular schools, or in other facilities of the Special Education Services Association, the state, or in suitable private facilities, impracticable.

(c) A school district may qualify, for the purposes of state aid, as a Special Education Services Association, if it provides a full complement of educational, corrective and supporting services, exclusive of services provided directly by the state, for all handicapped children resident within its boundaries. Upon application made pursuant to Section 308 (c) of this Title the [state education agency] shall determine whether the applicant school district meets the requirements of the subsection.

Section 308.

Application for Special Education Services Association Status

(a) Any Special Education Services Association which is in the process of formation, and which proposes to qualify for state aid, shall submit the interschool district agreement pursuant to which it proposes to function to the [state education agency]. Such submission may be either prior or subsequent to adoption of the agreement and the resolution or proposition required by Section 302 of this

Title but no Special Education Services Association shall receive state aid unless it has been approved therefor by the [state education agency].

(b) The [state education agency] shall approve a Special Education Services Association for state aid if it determines that:

1. The Association complies with all provisions of this Title, or if the Association is not yet in operation, that it will have the resources and authority to comply therewith.

2. The geographic area served or to be served by the Special Education Services Association is not so located or of such a configuration as to exclude one or more other school districts from effective participation in a Special Education Services Association or from forming a viable Association of their own.

(c) A school district may apply for and receive the status of a Special Education Services Association by submitting to the [state education agency] an appropriate resolution of its governing board requesting such status. The provisions of Section 309 hereof shall not apply to an application submitted pursuant to this subsection, but the application shall not be approved unless the [state education agency] finds that the school district complies with subsection (b) 1 of this Section, and that it maintains a full complement of special education facilities and programs.

Section 309.

Interschool District Agreement

(a) Each Special Education Services Association, other than one composed of a single school district, shall function pursuant to and in accordance with an interschool district Agreement (hereinafter referred to as "the Agreement"). The Agreement may be incorporated in the resolution or other action establishing the Special Education Services Association or may be a separate document. In any case, however, it shall be adopted either by affirmative vote of each of the governing boards of the school districts participating in the Special Education Services Association or by affirmative vote of the electors in each such school district.

(b) An Agreement shall contain:

1. A precise identification of the party school districts.

2. An enumeration or other precise delineation of the services to be provided by the Special Education Services Association.

3. Provisions relating to the internal management and control of the Special Education Services Association.

4. Provisions defining the relationships between the party school districts and the Special Education Services Association in regard to the responsibilities for regular education of handicapped children and

special education, corrective and supporting services for handicapped children.

5. Provisions fixing the financial responsibilities of each party school district to the Special Education Services Association or setting forth formulas, procedures and other specific methods for the calculation thereof.

6. A minimum duration for the Agreement.

7. Provisions for amendment, renewal, withdrawal from or termination of the Agreement.

8. Provisions for the disposition of Special Education Services Association property upon dissolution of the Association.

9. Financial settlement, if any, with a withdrawing school district.

10. Any other necessary or appropriate provisions.

(c) Prior to becoming effective, an Agreement shall be submitted to the [state education agency] and the Attorney General, and it shall not go into effect unless approved thereby. Failure to respond to a submission within [90] days shall constitute approval thereof.

(d) 1. The [state education agency] shall approve a submitted Agreement, unless it finds that the provisions thereof do not accord with this Title and the policies set forth herein, or unless it finds that the Agreement does not contain sufficient evidence that the Special Education Services Association will have the means of providing the facilities, personnel and services necessary to fulfill its obligations toward handicapped children.

2. The Attorney General shall approve a submitted Agreement, unless he finds it to be in improper form, or unless he finds one or more of its provisions contrary to law.

Section 310.

Contracts Not Prohibited

Nothing in this part shall be construed to prevent a school district from providing educational, corrective, or supporting services for handicapped children by contracting with another school district to provide such services for handicapped children from such other district.

Section 311.

Withdrawal and Dissolution

(a) A school district which is included in a Special Education Service Association may withdraw from participation in any part of the Association only with the approval of the Director of the Division for the Education of the Handicapped after he has conferred with the district and is satisfied that such withdrawal is in the interest of the handicapped children in the Association and the school district affected. Such withdrawal shall be effective only if the school board has the approval of the Director of the Division of the Education of the Handicapped to establish a comparable part of a program. Such withdrawal shall not be effective until the end of the next full school year. The withdrawing school district shall be liable for its proportionate share of all operating costs until its withdrawal becomes effective, shall continue to be liable for its share of debt incurred while it was a participant and shall receive no share in the assets.

(b) An Association established under this part may be dissolved by action of its governing board, but such dissolution shall not take place until the end of the school year in which the action was taken. When an Association is dissolved, assets and liabilities shall be distributed to all entities which participated in the Association.

Part IV. Planning

Section 400.

State Plan

(a) The [state education agency], acting through its Division for the Education of the Handicapped, shall make and keep current a plan for the implementation of the policy set forth in Part I of this Title. The plan shall include:

1. A census of the handicapped children in the state showing the total number of such children and the geographic distribution of handicapped children as a whole.
2. Provision for diagnosis and screening of handicapped children.
3. An inventory of the personnel and facilities available to provide instruction and other services for handicapped children.
4. An analysis of the present distribution of responsibility for special education between the state and local school systems and general units of local government, together with recommendations for any necessary or desirable changes in the distribution of responsiblities.
5. Identification of the criteria for determining how handicapped children are to be educated.
6. Standards for the education to be received by each of the several categories of handicapped children in regular schools or school districts and in state institutions, including methods of assuring that education afforded the handicapped will be as nearly equivalent as may be to that afforded regular children and also will take account of their special needs.
7. A program for the preparation, recruitment and inservice training of personnel in special education and allied fields, including participation, as appropriate, by institutions of higher learning, state and local agencies, and any other public and private entities having relevant expertise.

8. A program for the development, acquisition, construction and maintenance of facilities, and new, enlarged, redesigned and replacement facilities needed to implement the policy of this Title.

9. A full description of the state plan for providing special education to all handicapped children in this state, including each of the matters enumerated herein, and any other necessary or appropriate matters.

10. Any additional matters which may be necessary or appropriate, including recommendations for amendment of laws, changes in administrative practices and patterns of organization, and changes in levels and patterns of financial support.

(b) The plan required by subsection (a) hereof shall be presented to the Governor and the Legislature and made available for public distribution no later than [ ]. Thereafter, amendments to or revisions of the plan shall be submitted to the Governor and Legislature and made available for public distribution no less than [90] days prior to the convening of each regular session of the Legislature. All such submissions, except for the initial submission of the plan, shall detail progress made in fulfilling the plan and in implementing the policy of this Act.

Section 401.

Local Planning and Responsibility

(a) On or before [ ], each school district shall report to the [state education agency] the extent to which it is then providing the special education for handicapped children necessary to implement fully the policy of this Title. The report also shall detail the means by which the school district or political subdivision proposes to secure full compliance with the policy of this Title, including:

1. A precise statement of the extent to which the necessary education and services will be provided directly by the district pursuant to law requiring such direct provision.

2. A precise statement of the extent to which standards in force pursuant to Section 400(a)6 of this Title are being met.

3. An identification and description of the means which the school district or political subdivision will employ to provide, at levels meeting standards in force pursuant to Section 400(b) of this Title, all special education not to be provided directly by the state.

(b) After submission of the report required by subsection (a) hereof, the school district shall submit such supplemental and additional reports as the [state education agency] may require, in order to keep the plan current. By rule or regulation, the [state education agency] shall prescribe the due dates, form and all other necessary or appropriate matters relating to such reports.

(c) For the purposes of this Section, handicapped children being furnished special education in state schools or other state facilities shall continue to be the planning responsibility of the school district in which they would be entitled to attend school if it were not for the direct provision of special education to them by the state. A record of each such child, the nature and degree of his handicap and of the way in which his educational needs are being met shall be kept by the school district.

Section 402.

Interstate Cooperation

Any state and local plans made pursuant to this Part shall take into account the advantages and disadvantages in providing special education to particular kinds of handicapped children through cooperative undertakings with other jurisdictions. In addition to any arrangements that may be made pursuant to Sections 302-305 of this Title, the state or school district may enter into agreements with other school districts or states to provide such special education: provided that a child receiving special education outside the school district in which he would normally attend public school shall continue to be the responsibility of such school district and nothing herein shall be deemed to relieve the school district from compliance with the requirements of this Title.

(b) Agreements made pursuant to this Section may include the furnishing of educational and related services, payment of reasonable costs thereof, the making of capital contributions toward the construction or renovation of joint or common facilities or facilities regularly made available by one party jurisdiction to the handicapped children of another party jurisdiction, and furnishing of or responsibility for transportation, lodging, food and related living costs.

(c) Any child given educational or related services and any parent or guardian of such child, pursuant to this Section and any agreement made pursuant hereto, shall continue to have all civil and other rights that he would have if receiving like education or related services within the subdivision or school district where he would normally attend public school. No agreement made on the authority of this Section shall be valid unless it contains a provision to such effect.

Part V. Identification of Handicapped Children

Section 500.

Children Attending School

Every school district shall test and examine, or cause to be tested and examined, each child attending the public and private schools within its boundaries in order to determine whether such child is handicapped. The tests and examinations shall be administered on a regular basis in accordance with rules and regulations of the [State Education Agency]. As used in this Part, the term "schools" shall mean kindergartens and grades 1-12 and, if the school district provides educational programs below kindergarten level or above grade 12 to all children attending such programs.

Section 501.

Limitation

The requirements of Section 500 shall not apply to children attending private schools, if the children are not residents of this state provided that if the state or the school district had an agreement with another state or school district requiring such tests and examinations, the school district shall administer them and report the results to the school district of the child's residence.

Section 502.

Records

Every school district shall make and keep current a list of all handicapped children required to be tested and examined pursuant to Sections 500 and 501 of this Title who are found to be handicapped and of all children who are residents of the school district and are receiving home, hospital, institutional or other special education services in other than regular programs.

Part VI. Provision of Special Education Materials and Training

Section 600.

[Unit] Established

There shall be in the Division for the Education of the Handicapped a "Special Education Materials and Training Unit," hereinafter called ["the Unit"], for the purpose of assisting in the education of handicapped persons.

Section 601.

Functions

In addition to any functions in which it may engage pursuant to other provisions of this Title or other laws, the [Unit] may:

(a) Develop, test, demonstrate, maintain, purchase or otherwise acquire, store, produce if not reasonably obtainable from commercial sources, and make available equipment, materials, and special supplies and devices particularly useful in connection with the education of handicapped persons.

(b) Study, develop, and disseminate information concerning techniques for teaching handicapped persons.

(c) Collect, evaluate, and disseminate research data and other information related to special equipment, materials, supplies, devices, techniques and training.

(d) Provide instruction in the operation or use of equipment, materials, supplies, and devices of the type referred to in item 1 of this enumeration.

(e) Provide in-service training for teachers of handicapped persons and other persons requiring special skills or understanding in connection with the education of handicapped persons.

(f) Accept, administer, and utilize federal aid and any other grants, gifts, or donations of funds, equipment, materials, supplies, facilities, and services in connection with any of its authorized functions, and comply with any requirements or conditions attached thereto: provided that the same are not inconsistent with law.

Section 602.

Availability of Programs

(a) The [Unit] shall furnish, lend, or otherwise make available its equipment, materials, supplies, and devices to public school systems, private nonprofit schools, special schools or institutions for handicapped children, and public and private nonprofit institutions of higher learning.

(b) Public and private nonprofit institutions and organizations operating programs of vocational rehabilitation [recognized or approved] pursuant to [cite appropriate statute] also shall be eligible in the same manner as institutions qualifying under subsection (a) hereof.

(c) Pre-school public and private nonprofit programs for the education of handicapped children also shall be eligible in the same manner as institutions qualifying under subsection (a) hereof, if approved by the [Unit].

(d) Handicapped persons may apply for and receive equipment, materials, supplies and devices on an individual basis of the [Unit] has established loan or other services for making the same available to users not covered by subsections (a)-(c) hereof and has provided appropriate procedures therefor.

(e) The [Unit] shall make equipment, materials, supplies, or devices available pursuant to subsections (a)-(c) hereof only on written application made in such form and manner as it may prescribe. The application shall be approved, and equipment, materials, supplies, or devices furnished only if the [Unit] is satisfied that the applicant has a need therefor and is capable of putting them to appropriate use. Applications shall contain information concerning the number of handicapped children for whom the applicant is providing instruction or, in the case of a new institution or program, the number expected to be so served; the type or types of handicap; and such other information as the [Unit] may require.

Section 603.

Regional Service

(a) Except as may be provided pursuant to this Section, the [Unit] shall provide equipment, materials, supplies, devices and in-service training only to schools and school systems, institutions, organizations, and persons in this state.

(b) In view of the specialized character of the functions of the [Unit], it is recognized that its support and utilization on a multistate or regional basis may promote efficiency and economy, and may make it possible for more persons in need of special education to receive it. Accordingly, it is the policy of this state to encourage multistate and regional cooperation to that end.

(c) The [State Department of Education] may enter into contracts with other states or their appropriate educational agencies for the furnishing of services, equipment, materials, supplies, or devices by the [Unit]. Such contracts may provide for the carrying on of any one or more functions which the [Unit] is authorized to perform in such manner as to serve schools and school systems, institutions, organizations, and persons in such other state or states: provided that unless the activities covered by the contract are financed entirely by the other state or states, including the maintenance of a separate staff or the pro rata contribution to the salaries and other compensation of staff partly employed for the benefit of one or more other states and this state, no school or school system, institution, organization, or person may be furnished with equipment, materials, supplies, devices, or training who would be ineligible to receive the same under the laws of this state.

(d) Contracts made pursuant to this Section shall provide for:

1. their duration;
2. appropriate consideration and the payment thereof;
3. the nature and extent of the equipment, materials, supplies, devices, and training to be furnished and received;
4. the performance of inspections and examinations and the making of reports; the evaluation thereof; and the granting or denial of benefits on the basis thereof;
5. any other necessary and appropriate matters.

(e) Consideration provided by any contract made with the [State Department of Education] pursuant to this Section shall be at least sufficient to cover the cost of any equipment, materials, supplies, or devices furnished, and an equitable share of the operating costs in connection with any in-service training given to persons from other states. It shall be a guiding principle for the making of contracts pursuant to this Section that if the use made or to be made of the [Unit] by another state is in excess of [10] per cent of the use made by this state and schools and school systems, institutions, organizations, or persons in this state, consideration required from such other state shall include an equitable contribution to overhead and capital costs, as well as to operating costs and costs of equipment, materials, supplies, and devices furnished.

Section 604.

Contracting Authority

The [State Education Agency] is authorized to enter into contracts for the furnishing of equipment, materials, supplies, devices, and personnel training that are peculiarly useful in the teaching of handicapped children. The [State Education Agency] may pay such consideration, out of funds available therefor, as may be appropriate and equitable in the circumstances. If another state, public agency, or private nonprofit agency establishes and maintains a substantial, specialized program for the development, production, procurement, and distribution of special equipment, materials, supplies, and devices, or for the training of personnel useful in the teaching of handicapped children, and if the contract or contracts entered into pursuant to this Section assure this state of substantial benefits therefrom on a continuing basis, consideration paid by the [State Education Agency] may be calculated to include overhead and capital costs as well as more immediately operational costs and the costs of any articles or services furnished or to be furnished.

Section 605.

Availability of Articles and Services

Any articles or services secured by or through the [State Education Agency] pursuant to contracts made under authority of this Title may be made available to any school systems, special schools, or other persons and entities entitled to participate in or receive benefits from special services to the handicapped. The ultimate apportionment and bearing of costs as among the state, subdivisions thereof and other persons and entities shall be in accordance with law.

Section 606.

Inspections, Reports, and Records

(a) The [Unit] may inspect the facilities of any applicant for or recipient if its equipment, materials, supplies, and devices and may examine any pertinent records in order to determine facts relevant to the administration of this Title. For this purpose, the [Unit] and its duly authorized representatives shall have access to the premises and any pertinent records of the applicant or recipient at all reasonable times.

(b) The [Unit] may require reasonable reports from any recipient institution or program detailing the uses made of equipment, materials, supplies, and devices made available pursuant to this Title, and of the workability or beneficial effects obtained therefrom.

(c) The [Head of the State Education Agency] may provide for the consolidation of inspections, examinations of records, and making of reports pursuant to this Section with other inspections, examinations, and reports made or required to be made by the [State Education Agency] or may permit them to be separate, as in his judgment is most appropriate to the proper administration of this Title and the promotion of general efficiency.

Section 607.

Relationship of the Unit to Other Entities

(a) Unless the function is performed for it by a Special Education Services Association each school district and state institution shall establish and maintain a special education resources center which shall perform the functions of procurement, maintenance, servicing and distribution of special education equipment, supplies and materials to the schools of the district and to any other persons or entities to which they are made available pursuant to law. Special education equipment, supplies, and materials made available to schools and other entities shall be provided, made available and inventoried by such center.

(b) To the extent of its capabilities, a special education resources center may establish and operate or cooperate with others in establishing and operating programs of in-service training similar to those authorized for the state unit by Part VIII of this Title.

(c) Centers established as required by this Section shall cooperate with and may borrow or otherwise obtain from the state unit, regional instructional materials centers, federal and other governmental agencies, and appropriate private agencies such equipment, supplies and materials as may be available therefrom and may be responsible for their proper distribution to and collection from schools and other entities entitled to receive and utilize them.

(d) It is the purpose of this Section to promote the efficient and expert use of special education aids and to discourage their being positioned, kept or made available for use by persons and under conditions not conducive to their proper employment. The Division for the Education of the Handicapped shall develop, revise and keep in force regulations and guidelines for the operation of centers and for their relationships to schools or other proper recipient entities. The state Unit shall assist centers in their programs of training, equipment servicing, distribution and general administration.

(e) The state Unit shall encourage the maintenance of centers by Special Education Services Associations on behalf of their participating school districts, except in those instances where an individual school district has qualified as a Special Education Services Association.

Part VII. Remedies

Section 700.

Administrative and Judicial Review

(a) A child, or his parent or guardian, may obtain review of an action or omission by state or local authorities on the ground that the child has been or is about to be:

1. denied entry or continuance in a program of special education appropriate to his condition and needs.
2. placed in a special education program which is inappropriate to his condition and needs.
3. denied educational services because no suitable program of education or related services is maintained.
4. provided with special education or other education which is insufficient in quantity to satisfy the requirements of law.
5. provided with special education or other education to which he is entitled only by units of government or in situations which are not those having the primary responsibility for providing the services in question.
6. assigned to a program of special education when he is not handicapped.

(b) The parent or guardian of a child placed or denied placement in a program of special education shall be notified promptly, by registered certified mail return receipt requested, of such placement, denial or impending placement or denial. Such notice shall contain a statement informing the parent or guardian that he is entitled to review of the determination and of the procedure for obtaining such review.

(c) The notice shall contain the information that a hearing may be had, upon written request, no less than [15] days nor more than [30] days from the date on which the notice was received.

(d) No change in the program assignment or status of a handicapped child shall be made within the period afforded the parent or guardian to request a hearing, which period shall not be less than [14] days, except that such change may be made with the written consent of the parent or guardian. If the health or safety of the child or of other persons would be endangered by delaying the change in assignment, the change may be sooner made, but without prejudice to any rights that the child and his parent or guardian may have pursuant to this Section or otherwise pursuant to law.

(e) The parent or guardian shall have access to any reports, records, clinical evaluations or other materials upon which the determination to be reviewed was wholly or partially based or which could reasonably have a bearing on the correctness of the determination. At any hearing held pursuant to this Section, the child and his parent or guardian shall be entitled to examine and cross examine witnesses, to introduce evidence, to appear in person, and to be represented by counsel. A full record of the hearing shall be made and kept, including a transcript thereof if requested by the parent or guardian.

(f) A parent or guardian, if he believes the diagnosis or evaluation of his child as shown in the records made available to him pursuant to subsection (e) to be in error, may request an independent examination and evaluation of the child and shall have the right to secure the same and to have the report thereof presented as evidence in the proceeding. If the parent or guardian is financially unable to afford an independent examination or evaluation, it shall be provided at state expense.

(g) The [state education agency] shall make and, from time to time, may amend or revise rules and regulations for the conduct of hearings authorized by this Section and otherwise for the implementation of its purpose. Among other things, such rules and regulations shall require that the hearing officer or board be a person or composed of persons other than those who participated in the action or who are responsible for the omission being complained of; fix the qualifications of the hearing officer or officers; and provide that the hearing officer or board shall have authority to affirm, reverse or modify the action previously taken and to order the taking of appropriate action. The rules and regulations shall govern proceedings pursuant to this Section, whether held by the [state education agency] or by a [local education agency].

(h) The determination of a hearing officer or board shall be subject to judicial review [in the manner provided by the state administrative procedure act] [in the manner provided for judicial review of determinations] of the [state or local education agency] as the case may be. [If there is no applicable procedure, appropriate statutory provisions should be added here].

(i) If a determination or hearing officer or board is not fully complied with or implemented the aggrieved party may enforce it by a proceeding in the [ ] Court. Any action pursuant to this subsection shall not be a bar to any administrative or judicial proceeding by or at the instance of the [state education agency] to secure compliance or otherwise to secure proper administration of laws and regulations relating to the provision of regular or special education.

(j) The remedies provided by this Section are in addition to any other remedies which a child, his parent or guardian may otherwise have pursuant to law.

Section 701.

Enforcement Not Affected

Nothing in this Title shall be construed to limit any right which any child or his parent or guardian may have to enforce the provision of any regular or special educational service; nor shall the time at which school districts are required to submit plans or proceed with implementation of special education programs be taken as authorizing any delay in the provision of education or related services to which a child may otherwise be entitled.

Section 702.

Direct State Action

(a) If, at any time after [,] a school district is found by the [state education agency] to have failed to provide necessary education to all handicapped children who by law are entitled to receive the same from such school district, the [state education agency] may withhold all or such portion of the state aid for the regular public schools as, in its judgment, is warranted. The denial of state aid hereunder may continue until the failure to provide special education required is remedied. Whether or not the [state education agency] elects to withhold aid pursuant to the preceding sentence, it may provide the education directly.

(b) No action pursuant to subsection (a) hereof shall be taken by the [state education agency], except after public hearing on due notice, and on a record that establishes the failure of the school district to provide special education of adequate quantity and quality.

(c) If the [state education agency] acts to provide special education pursuant to this Section, such action may include:

1. The hiring, employment, and direction of special education teachers and any necessary supporting professional and other personnel.
2. The incorporation of such personnel into the affected school system.

3. The procuring and employment of such supplies, equipment and facilities as may be reasonably necessary or appropriate.

4. The furnishing of such administrative supervision and services as may be necessary to make the special education program effective.

5. The direct provision in state institutions or facilities of the special education, except that no child shall be removed from the school district in which he would regularly be entitled to receive special education, without the consent of such child's parent or guardian.

6. Any other incidental matters reasonably necessary to implement any one or more of the foregoing.

(d) Any costs incurred by the [state education agency] in administering subsections (a)-(c) of this Section shall be direct charges against the school district and shall be paid thereby. If a school district shall resist timely payment, the [state education agency] may make payment and reimburse itself by appropriate judicial proceedings against the school district.

(e) During any time when the [state education agency] is providing special education pursuant to this Section, it shall be a purpose of the [state education agency] to assist the school district to assume or reassume its full responsibilities for the provision of education for handicapped children. However, no state aid pursuant to Part X of this Title shall be given to a school district during or for any period when the provision of special education on its account is being administered directly by the [state education agency] pursuant to this Section. The [state education agency] shall return responsibility to the school district as soon as it finds that it is willing and able to fulfill its responsibilities pursuant to law.

Part VIII. Technical Assistance and Personnel Training

Section 800.

Technical Assistance

The [state education agency], upon the request of any school district shall provide technical assistance in the formulation of any plan or subsequent report required pursuant to Section 401 of this Title. However, any such assistance shall be only advisory and consultative in character and shall not be designed to transfer either in whole or in part, the responsibility for or actual development of the plan or report.

Section 801.

In-Service Training

The in-service training programs of the Special Education Materials and Techniques Unit shall be available to any teacher of handicapped persons in the regular employ of any school system, institution, organization, or program which could be an eligible applicant for equipment, materials, supplies, or devices pursuant to Section 602 of this Title. However, the locations, times, duration, and specific educational or experience prerequisites for particular training programs or courses shall be determined by the [Unit].

Section 802.

Training

(a) The Division for the Education of the Handicapped may make traineeship or fellowship grants to persons who are interested in working in programs for the education of handicapped children, for either part-time or full-time study in programs designed to qualify them as special education personnel. Persons to qualify for a traineeship must have earned at least [sixty] semester hours of college credit and persons to qualify for a fellowship must be graduates of a recognized college or university. Such traineeships and fellowships may be in amounts of not more than [$] per academic year for traineeships and not more than [$] per academic year for fellowships with [$] per year per legal dependent except in addition, an additional sum up to [$] annually for each grantee may be allowed to any approved institution of higher learning in this state for the actual cost to the institution, as certified by the institution. Part-time students and summer session students may be awarded grants on a prorata basis.

(b) The Division for the Education of the Handicapped may contract with any approved institution of higher learning to offer courses required for the training of special education personnel at such times and locations as may best serve the needs of handicapped children in this state.

(c) The Division for the Education of the Handicapped shall administer traineeship and fellowship accounts and related records of each person who is attending an institution of higher learning under a traineeship or fellowship awarded pursuant to this Section.

(d) Following the completion of the program of study, the recipient of a traineeship or fellowship is expected to accept employment within one year in an approved program of education for handicapped children in this state on the basis of one-half year of service for each academic year of training received through a grant made under this Section. A person who fails to comply with this provision may, at the discretion of the Division for the Education of the Handicapped be required to refund all or part of traineeship or fellowship monies received.

Section 803.

Grants

The Division may provide grants to public and private agencies for such research, development, and model programs as are required to promote effective special education.

Part IX. Facilities

Section 900.

Regular School Facilities

(a) Every school district of this state constructing, renovating, remodeling, expanding or modifying school buildings or other structures intended as adjuncts thereto shall plan, design, construct and equip all such buildings and structures in such manner and with such materials as will facilitate use by all handicapped children who may reasonably be expected to enter upon the premises and to make use of them for instructional, remedial or supplementary services. This Section shall be interpreted and administered in the light of the policy of this state to educate and provide services for handicapped children in or in close proximity to the regular schools to the maximum practicable extent.

(b) No school or school-related construction, renovation, remodeling, expansion or modification shall be eligible for state aid pursuant to [cite appropriate statute] unless the [state education agency] finds that it is in conformity wtih subsection (a) hereof and [title of state law prohibiting architectural barriers for the handicapped].

Section 901.

Plans and Specifications

(a) Plans and specifications for every special education facility shall be prepared in two parts, as follows:

1. A statement of the educational and related objectives and functions to be served and the uses to be made of the facility.
2. Architectural plans and specifications.

(b) Plans as required by subsection (a) hereof shall be submitted to the [state education agency] for approval thereby. Such approval shall be a prerequisite to the awarding of any construction contract in connection with the facility, except for contracts for the development of the plans and specifications required to be submitted: nor shall any construction commence or permit therefor be issued prior to approval of the plans and specifications by the [state education agency].

(c) Approval shall be given only if the Division of Education for the Handicapped determines that the architectural plans and specifications properly implement the stated educational and related objectives and functions, and if the [state school construction agency] determines that the architectural plans and specifications provide for design, materials and equipment appropriate to serve the stated objectives and functions. If the submission is of plans and specifications for a building or other structure which does not include a special education facility, approval by the Division of Education for the Handicapped shall be limited to a certification that the submitting authority has other facilities adequate to meet the needs of handicapped children.

(d) No facility to which this Section applies shall be accepted by any agency of this state, or any school district, [Special Education Services Associations], or subdivision unless it conforms to the plans and specifications as approved, or as amended pursuant to subsection (e) hereof.

(e) Subsequent to approval of plans and specifications pursuant to this Section, they may be amended on a showing that the stated educational and related objectives and functions have been replaced by other suitable objectives and functions and that the architectural plans and specifications have been modified to conform to the new objectives and functions, or that the proposed amendment of architectural plans and specifications will not impair the suitability of the facility for the previously stated objectives and functions. Amendments shall be submitted and approved in the same manner as original submissions.

(f) Any entity which may be eligible for state aid pursuant to [cite statute providing state aid to construction of special education facilities], may qualify therefor only on submission and approval of plans and specifications in accordance with this Part.

Section 902.

Rules, Regulations and Manual

(a) The [state education agency] shall issue, and from time to time amend and revise, rules and regulations for the implementation of this Part. Such rules and regulations shall include procedures for submission and review of plans and specifications and may include requirements for additional information to be furnished by school districts, Special Education Services Associations, or entities constructing or proposing to construct special education facilities.

(b) The [state education agency] shall develop and publish a manual containing educational, and architectural standards to be met by special education facilities. The manual shall be incorporated in the rules and regulations issued pursuant to this Part and and no approval or acceptance of a facility shall be lawful, except on compliance with the standards contained therein.

(c) The manual shall be developed, amended, and revised with due regard for standards applicable to the construction of special education facilities issued by recognized professional organizations.

(d) Public and private builders and operators of special education facilities may consult with the [state education agency] concerning any matter related to the administration of this Part or any special education facility proposed to be constructed or operated by them, but no such consultation and no representation made shall be construed as an approval of plans and specifications. Such approval may be given only pursuant to Section 901 of this Act.

Part X. Finance

Section 1000.

State Aid to be Provided

The state shall provide financial aid in each school year to school districts and other [public entities] [entities entitled by the laws of this state to receive school aid] for educational and related services provided by them for handicapped children. Such aid shall be determined and paid in accordance with this Part and rules and regulations of the [state education agency].

Section 1001.

Elements to be Aided

State financial aid pursuant to this Title may be claimed by and shall be paid to any public school district or other [public entity] [entities entitled by the laws of this state to receive school aid] for each of the following elements:

(a) The education of handicapped children in the regular school programs of the district or entity.

(b) The education of handicapped children in special classes, schools and programs designed to meet their special needs; and the furnishing of corrective or remedial services designed to ameliorate or eliminate physical, mental, emotional, or learning disabilities or handicaps.

(c) The furnishing of transportation.

Section 1002.

Amounts of Aid

(a) For purposes of entitlement to state aid, handicapped children shall be counted in the same manner as other children. [Per pupil aid shall be determined on the same basis as for normal children pursuant to [[cite appropriate section of state law]].] [Units shall be allotted for handicapped children in accordance with [[cite appropriate provision of Minimum Foundation Program Laws]], except that allowance of any lesser number of pupils to comprise a standard or minimum unit shall continue as provided in [[cite appropriate section of state law]].]

(b) In addition to the state aid claimed and paid pursuant to subsection (a) hereof, any school district or Special Education Services Association which has maintained an approved program of education for handicapped children during any school year shall be entitled to and receive reimbursement from the state for the excess cost of the individuals in said program above the cost of pupils in the regular curriculum which shall be determined in the following manner:

1. Each district shall keep an accurate, detailed, and separate account of all money's paid out by it for the maintenance of each of the types of classes and schools for the instruction and care of pupils attending them and for the cost of their transportation, and shall annually report thereon, indicating the excess cost for elementary or high school pupils for the school year ending [   ] over the last ascertained average cost for the instruction of regular children in the elementary public schools or public high schools as the case might be, of the school district for a like period of time of attendance.

2. Each Special Education Services Association shall keep an accurate, detailed, and separate account of all monies paid out by it for the maintenance of each of the types of classes and schools for the instruction and care of pupils attending them and for the cost of their transportation, and shall annually report thereon, indicating the excess cost for elementary or high school pupils for the school year ending in [   ] over the last ascertained average cost for the instruction of regular children in the elementary public schools or public high schools as the case might be, of the school districts served by the Special Education Services Association for a like period of attendance.

(c) [In addition to any state aid for the transportation of children to and from school and other transportation in connection with school-related activities], the [state education agency], upon a claim properly substantiated, shall pay 100 percent of the costs of special buses and other special equipment actually employed in transporting handicapped children.

Section 1003.

Apportionment of Aid

If any of the educational or other services aided pursuant to this Part are provided partly by one school district or other entitled entity and partly by another such district or entity, and if there is no valid contract or agreement by which one of the districts or entities is the proper claimant for all the aid in question, each such district and entity shall be entitled to claim and receive a proportionate share of State aid in accordance with its actual assumption of costs. The [state education agency] shall provide for the calculation and apportionment of state aid in cases covered by this subsection.

Section 1004.

Special Fund

(a) There is hereby established a Special Education Fund in the state treasury. Each budget of the [state education agency] shall contain an appropriation item for the Fund. It is the legislative intent that the Fund shall be kept at a level that will permit an annual rate of expenditure therefrom of not less than [$].

(b) The [state education agency] shall make grants from the Fund to school districts, special education services associations, and other appropriate entities. The purposes of such grants shall be to make it possible for the recipients to: 1. secure technical assistance with planning, design, acquisition, and construction of facilities or equipment for the education of handicapped children. 2. Supplement otherwise available but inadequate funds for planning, design acquisitions, or construction of facilities or equipment for the education of handicapped children.

(c) In applying for grants under this Section, a school district, special education services association, or other appropriate entities shall demonstrate that it proposes to use the aid for a purpose identified in the state plan made pursuant to Section [ ] of this title as requiring particular current attention or for a purpose selected by the division of education for the handicapped as one currently to receive concentrated efforts at improvement.

(d) Grants pursuant to this Section shall be in addition to regular or special aid otherwise available from the state for educational purposes.

Section 1005.

Federal Aid

The [state education agency] may apply for, administer, receive, and expend any federal aid for which this state may be eligible in the administration of this Title. If such aid is available for a multistate or regional program in which this state participates pursuant to one or more contracts in force pursuant to this Title, the [state education agency] may apply for and devote all or a portion of the federal aid to the multistate or regional program.

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